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Title:
The Immovable Property Commission

An Exercise in Transitional Justice in Cyprus?

The Immovable Property Commission: An Exercise in Transitional Justice in Cyprus?

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A thesis submitted to the University of Bristol in accordance with the requirements for award of the degree of PhD in the Faculty of Social Sciences and Law, Law School, May 2020.

WORD COUNT: 87913

Abstract

As a long-standing issue both for the main actors of the conflict and the international community, Cyprus has been on the UN's agenda including several attempts at brokered solutions. The international efforts to resolve the enduring problems have borne little fruit. However, one of the most innovative has been the establishment of the Immovable Property Commission (IPC) in the north to address claims relating to property abandoned by Greek Cypriots who fled south.

This thesis considers two sets of question raised by these events. The first concerns why the IPC was established, how it functions, the challenges it faces and how these might be addressed. As a lawyer working for this unique institution, I fully recognize that, together with other methodological issues, this privileged perspective creates a host of well-rehearsed challenges considered more fully later.

The second concerns how the IPC can be characterized with respect to the vast and varied literatures on, for example, security, peace, conflict, civil war and transitional justice. This study concentrates upon the IPC alone, and situates it within a transitional/transformative justice framework, for the following principal reasons. First, rising to the challenge of describing how this unique institution operates, and seeking to identify its strengths and weaknesses, would make a distinctive contribution to scholarship allowing others to make comparisons they may deem appropriate. Second, because the IPC is undeniably a "justice" institution which has emerged out of a series of transitions Cyprus has undergone since the 1960s, these two characteristics would necessarily occupy centre stage whatever the governing analytical framework. Finally, in addressing one type of injustice, the IPC may also, paradoxically and inadvertently, be contributing to others, including the deeper institutionalization of partition, a conundrum which has significant policy implication.

Acknowledgements

I would like to express my deepest thanks to my supervisor, Professor Steven Greer, for being a trusted mentor. I am grateful to him for his unwavering support, constructive advice and invaluable comments that have kept me on the right path from the very inception of this thesis to its final version. Whenever I was lost during this journey, he enabled me to keep in mind that there are always ways. If there was one thing I would never change during the course of this work, this would be him as my supervisor.

Particular thanks are also due to Professor Julian Rivers as my second supervisor for his insightful comments and suggestions.

I would also like to take this opportunity to thank my examiners, Professors Antonia Layard and Cath Collins, for their helpful and constructive comments which have immeasurably improved the thesis.

I am thankful to all interview participants for their time and invaluable information they provided. I would also like to express my gratitude to Nahide Akyüzlü Aylanç, the Immovable Property Commission Secretary.

As always, thanks to my parents and brother for their support all along the way, to Selma Ling and Norman Ling for their thoughtful insights and rich conversations, and to Sezin Osman and Zalihe Osman for being there whenever needed.

Author’s declaration

I declare that the work in this dissertation was carried out in accordance with the requirements of the University's Regulations and Code of Practice for Research Degree Programmes and that it has not been submitted for any other academic award. Except where indicated by specific reference in the text, the work is the candidate's own work. Work done in collaboration with, or with the assistance of, others, is indicated as such. Any views expressed in the thesis are those of the author.

SIGNED:..... DATE:.....

Contents

List of Abbreviations

ACHPR	African Charter on Human and Peoples' Rights
ACHR	American Convention on Human Rights
App no	Application number
CBMs	Confidence Building Measures
CMP	Committee on Missing Persons
DRC	Democratic Republic of Congo
ECHR	European Convention on Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
GC	Greek Cypriot
GNR	Guarantees of non-recurrence
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICTJ	International Center for Transitional Justice
IDP	Internally Displaced Person
IPC	Immovable Property Commission
IPDECC	Immovable Property Determination, Evaluation and Compensation Commission
PACE	Parliamentary Assembly of the Council of Europe
RoC	Republic of Cyprus
TJ	Transitional Justice
TTJ	Transformative (Transitional) Justice
TRNC	Turkish Republic of Northern Cyprus
TC	Turkish Cypriot
UDHR	Universal Declaration of Human Rights

Chapter 1 Introduction

I. Background and Research Questions

According to Bryant, "in the aftermath of war, those who remain must rebuild lives in spaces that bear the scars of conflict".[1] The "new regime" must deal with the consequences of the conflict and address the "many faces of injustices".[2] Cyprus is among the societies which have experienced conflict, displacement and redistribution of "enemy" property.[3] The island, partitioned following the intercommunal strife and Turkish military intervention in 1974, presents one of the world's most enduring and largely ignored conflicts.[4] Greek Cypriots (GCs) who fled from the north left behind an estimated 1,350,000 donums[5] of property and Turkish Cypriots (TCs) about 400,000 donums of property in the south.[6] Abandoning their property, approximately 142,000 GCs from the north fled south. Many were settled in empty TC houses or in houses built on TC land. Again, approximately 55,000 TCs abandoned their property and fled north, and were settled in GC property.[7]

Active armed hostilities have ceased since partition in 1974 and in recent years there have been signs of possible resolution. However, all attempts have so far ended without agreement.[8] The island, including the capital Nicosia, is divided into northern and southern zones. In 1983 the northern zone declared itself the Turkish Republic of Northern Cyprus (TRNC), which is recognized as a State only by Turkey and regarded by the rest of the world as an illegally occupied part of the independent Republic of Cyprus (RoC).[9]

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[1] Rebecca Bryant, 'History's Remainders: On Time and Objects After Conflict in Cyprus' (November 2014) 41 (4) American Ethnologist 681, 681

[2] Erin Daly, 'Transformative justice: Charting a path to reconciliation' (2001) 12 *International Legal Perspectives* 73, 79-80

[3] Bryant, 'History's Remainders' (n 1) 681

[4] See Deniz Ş Sert, 'Cyprus: Peace, Return and Property' (2010) 23(2) JRS 238, 239–40

[5] Unit of measurement of the area of land used in Cyprus (1 donum = 0.33 acres =1,338 squaremeters)

[6] Mensur Akgün and others, 'Quo Vadis Cyprus?' (Tesev Working Paper, April 2005) 35 (The displacement and donum numbers vary. For example; according to GCs, land ownership in donums left in the north by the GCs is 1,463,382 donums, whereas 413,177 donums of land is left by the TCs in the south. TC claims are 1,228,838 donums and 679,057 donums respectively. Again, for example; according to official GC sources, 142,000 GCs (almost 30% of the entire Greek population at that time) were displaced; and according to official TC sources 45,000 TCs (almost 40% of the population at that time) were relocated. (Ayla Gürel and Kudret Özersay, 'The Politics of Property in Cyprus, Conflicting Appeals to 'Bizonality' and 'Human Rights' by the Two Cypriot Communities' (Prio Report, 3/2006) 3, 8-9)

[7] Rebecca Bryant and Mete Hatay, 'Suing for Sovereignty: Property, Territory and the EU's Cyprus Problem' (Global Political Trends Center, Policy Brief, 2009) 4

[8] 'Cyprus Talks End without Agreement, Says UN Chief', *The Guardian* (7 July 2017) <https://guardian.ng/news/cyprus-talks-end-without-agreement-says-un-chief/> accessed 3 December 2018

[9] See UN Security Council Res 541, S/Res/541 (18 November 1983)

The physical division between the two major ethnic groups (the TCs and GCs)[10] was justified and still perceived by some as a way of promoting the physical security of the island's inhabitants. This has resulted in considerably less attention being paid to efforts to promote justice and reconciliation.[11]

With this in mind, the starting point of this research has been the work of the International Center for Transitional Justice (ICTJ) between March 2009 and April 2011 in Cyprus under a project funded by the European Union. The goal of this project was to help civil society and victims groups in addressing the island's violent past. The focus was on sharing experiences of other countries, holding workshops on truth-telling, memorialization and documentation with civil society organizations, local community leaders and politicians, and providing assistance on developing educational materials with respect to missing persons.[12] In 2012, the two co-managers of the ICTJ Cyprus Team for the project published a report "Legacies of Violence and Overcoming Conflict in Cyprus, The Transitional Justice landscape", addressing transitional justice issues in Cyprus.[13] The report noted the importance of a cross-communal discussion in Cypriot public opinion about coming to terms with the past in Cyprus.[14] The authors identified four particular areas of transitional justice (TJ) relevant to Cyprus which came to the fore over the course of their work - truth-seeking initiatives, criminal prosecutions, memorialisation efforts, and documentation projects.[15]

Cyprus represents a complex case since there are two distinct authorities, namely the RoC and the TRNC, that have still been contemplating the future of the island under the mediation efforts of the United Nations (UN). If a comprehensive settlement for the resolution of the Cyprus problem is reached, a transition to a united Cyprus will take place. On the other hand, Cyprus has already undergone a series of

[10] There are Maronites, Armenians and Latins considered as minorities in Cyprus. In this thesis, reference was made to two major communities of the island. This should not be understood as ignoring the existence of these groups as members of Cyprus, but because the main ethnic struggle was between the Greek and Turkish Cypriots which was also formalised in the post-independence (1960 – the RoC) period when these groups were compelled to become members of either dominant community.

[11] The UN Secretary-General described the Cyprus conundrum in the following terms: "Each side felt vulnerable to a larger potential enemy – the GCs feared the Turkish Goliath, the TCs feared the GC Goliath." (UN Secretary-General, 'Report of the Secretary-General on His Mission of Good Offices in Cyprus' S/2003/398 (1 April 2003), 5

[12] <https://www.ictj.org/our-work/regions-and-countries/cyprus> accessed 3 November 2016

[13] Umut Bozkurt and Chrystalla Yakinthou, 'Legacies of Violence and Overcoming Conflict in Cyprus, The Transitional Justice Landscape' (Prio Cyprus Center 2/12)

[14] Ibid 3

[15] See ibid

transitions. The period when the island was under British rule until the establishment of the RoC in 1960 following an anti-colonial struggle, and the period after the establishment and the collapse of the Republic could be considered as transitions. The latter is from a relatively peaceful unitary state to a partitioned island. It has not been a transition from authoritarianism to democracy because the RoC has been a democratic state. However, currently there are separately governed States, namely the TRNC and the RoC, in both sides of the island which have been running under their respective Constitutions. On the other hand, TCs, as one of its constituent communities, are absent from the RoC institutions in contravention to its Constitution and each side has different perspectives on how the situation has evolved.[16] Further transitions are also possible but not imminent. Bell observes, there is a lack of a clear definition of transition which "creates difficulties for the disciplines engaged in studying particular types of transition (for example political science or peace studies) in their attempts to dominate the discourse".[17] In both sides of the island, both authorities attempt to deal with the reflections of the partitition, such as property rights of each communities which can be considered as processes of transition of property rights. The situation on the island resembles to that of the Northern Ireland where Campbell, Ni Aolain and Harvey conceive of it "as a site of multiple transitions", beginning with the disintegration of the old regime in 1968-1972, followed by significant reforms to the state under direct rule (1972-1998). This is evident in the scale of ongoing human rights violations at the time of the Good Friday Agreement, very much lower than in the past despite the legacy of earlier violations remaining unaddressed.[18]

Turning to Cyprus again, Bozkurt and Yakinthou note in their report mentioned above that Cyprus "is not a post-conflict society".[19] Furthermore, the authors argue that, on a deeper level, if "one of the aims of transitional justice is the restoration of trust between citizens and institutions, there should be at the very least some internal agreement on the legitimacy of those institutions". Observing that "the institutions themselves are one of the primary sites of intercommunal contestation"

[16] Hoffmeister F, *Legal Aspects of the Cyprus Problem, Annan Plan and EU Accession* (Martinus Nijhoff Publishers 2006) 31 (The GCs put forth the doctrine of necessity to justify the said contravention claiming that the legal order had to be preserved.)
[17] Christine Bell, 'Transitional Justice, Interdisciplinarity and the State of the 'Field' or 'Non-Field'' (2009) 3 IJTJ 5, 24
[18] Colm Campbell, Fionnuala Ni Aolain and Colin Harvey, 'The Frontiers of Legal Analysis: Reframing the Transition in Northern Ireland', (2003) 66 Mod L Rev 317, 337
[19] Bozkurt and Yakinthou (n 13) 6

on the island, the authors state that violations committed by both state and non-state groups remain unaddressed.[20] They particularly note that TJ is immediately relevant to the issue of the continuing violation of the rights of the families of those missing whose fate is still unknown as a result of the conflict and of acts of violence between 1963 and 1974. These issues not only affect specific institutions and policies such as security sectors and the education systems, but also remain as an obstacle for the ongoing peace process under the auspices of the UN.[21]

It was observed by Bozkurt and Yakinthou during the meetings held under this project that Cyprus also presents a rather complex case for TJ, concerning a society dealing with the legacy of conflict-related violence, while, at the same time being held hostage by an ongoing peace process.[22] Since negotiations to solve the problem have continued for more than 50 years, disputes and legal claims particularly over property and uncovering the remains of the missing have "led to the realization that everyone has his or her own Cyprus problem, and that for many people solving their own Cyprus problems is more than enough."[23] Currently, alternative truth-seeking approaches have been ongoing, documentation efforts have been increasing, and some forms of compensation and restitution have been offered to GC displaced persons for their property.[24] And although there is no agreed solution, there are attempts to seek redress for human rights violations. However, these processes sit alongside, and are often at odds with the peace process.[25]

The European Court of Human Rights (ECtHR) has also addressed relevant issues from missing persons to property rights.[26] The property dispute is one of the many faces of the Cyprus problem, and we are concerned here only with those relating to abandoned Greek property in the north. The ECtHR became a more important actor in Cyprus in the 1990s following the individual applications of GCs especially with the landmark judgment in *Loizidou v Turkey* in 1996.[27] There was no mechanism for abandoned GC properties in the north until the Immovable Property Determination, Evaluation and Compensation Commission (IPDECC) was

[20] Ibid 6
[21] Ibid 6-7
[22] Ibid 7
[23] Mete Hatay and Rebecca Bryant, 'Negotiating the Cyprus Problem(s)' (Tesev Publications 2011) 22
[24] See Bozkurt and Yakinthou (n 13)
[25] This is considered in Chapters 2 and 3
[26] See for example *Cyprus v Turkey* Appl Nos 6780/74, 6950/75 Commission Report (10 July 1976); *Cyprus v Turkey* Appl No 8007/77 Commission Report (4 October 1983)
[27] *Loizidou v Turkey* App No 15318/89 Merits (18 December 1996)

established in response to the *Loizidou* case. From 2003 onwards, a shift can be observed with the *Xenides-Arestis* and *Demopoulos and others* cases, in which, the Court accepted that the Immovable Property Commission (IPC - established in 2005 replacing the IPDECC as a Convention compliant mechanism) in the north (the TRNC - administered by the TCs) constituted an adequate and effective remedy under Article 35 of the Convention.[28] This thesis focuses on this part of the problem; i.e. property, and the work of the IPC, for whom I work as a lawyer, as a mechanism established to remedy property claims of GCs unresolved for 40 years. In this respect, the IPC deals with issues where "traditional legal mechanisms prove difficult or undesirable politically (for whatever reason)".[29] The reason for solely addressing GC claims to property in this thesis is the fact that there is no such special mechanism for TC properties remaining in the south (the RoC – administered by the GCs).

The GC policy for TC properties has been significantly different from that of the TCs'. TCs are considered by the TRNC as legal owners of their properties but were placed under the administration of the Minister of the Interior as "the Custodian" under Law No 131/1991. The Custodian has all the rights and obligations which a TC owner would have. TC claims over these properties are dependent on strict conditions set forth in the Law. The Law was challenged various times before the ECtHR by TCs, the leading one being *Niazi Kazalı and Hakan Kazalı.* In this case the application was declared inadmissible for non-exhaustion of domestic remedies pursuant to Article 35 of the European Convention on Human Rights (ECHR).[30] As mentioned above, the property rights of TCs in the south is not within the scope of this research since, first of all, a mechanism similar to that of the IPC is not available. Secondly, the system in the north, which will be examined in Chapter 2 in detail, indicates that the TCs assumed the property issue would be solved by way of comprehensive exchange between the two communities.[31] In other words, the maximalist position considered the property issue as a finished matter and this has been reflected in the property legislation in force in the north.

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[28] *Xenides-Arestis v Turkey* App No 46347/99 Merits (22 December 2005); *Xenides-Arestis v Turkey* App No 46347/99 Just Satisfaction (7 December 2006); *Demopoulos and others v Turkey* Apps Nos 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04, 21819/04 Admissibility (1 March 2010)

[29] Bell, 'Transitional Justice, Interdisciplinarity and the State of the 'Field' or 'Non-Field'' (n 17) 24

[30] *Niazi Kazalı and Hakan Kazalı v Cyprus* (Apps 49247/08 1545/07 1760/05 30792/05 3240/05 34776/06 38902/05 4080/06 49307/08) Admissibility (6 March 2012)

[31] Gürel and Özersay (n 6) 11

The limited literature on GC property claims and the work of the IPC has so far been dominated by and confined to juridical commentary upon the background to the establishment of the IPC solely from a human rights perspective. However, human rights is not an end in itself and may not be an appropriate response to a particular kind of conflict. Since the Cyprus problem itself has wider implications, the questions of what the IPC is supposed to do, how it functions, whether it fulfills its mandate, whether it is autonomous to the political conflict and whether it could be improved need to be addressed beyond a human rights framework. Bearing all this in mind, the objective of this research is to consider TJ for its possible analytical and policy contribution to Cyprus with a particular focus on the IPC as an institution. As a mechanism for remedying property rights of the displaced GCs, I attempt at considering whether it is capable of making a positive contribution to community relations in Cyprus. The difficulty entailed here is the fact that TJ has not been part of an official policy in Cyprus, but, as addressed by Bozkurt and Yakinthou, "more and more people from civil society, academia, the arts community, and within political circles are beginning to think about how to overcome the burden of the past in order to create a more peaceful future".[32] In other words, it is unclear how the trajectory of TJ debate, policy and practice in Cyprus might be incorporated in official policy. Recent TJ literature in Cyprus proposes initiatives referring to Tunisia for country-wide fixed-term consultation processes and Colombia for government-to-victim/survivor dialogues.[33]

In all its complexity, the issue is also related with other fields considered in the next section.

II. Transitional Justice and Peacebuilding

Cyprus presents a case illustrating the spread of nationalism and the impact this has on social and political institutions. Identity has shaped the discourse on the conflict and suggested that cooperative resolution is much needed.[34] It is a protracted conflict which Fisher describes as "clearly an identity-based conflict . . . in which group

[32] Bokzurt and Yakinthou (n 13) 3

[33] Christalla Yakinthou, 'Transitional Justice in Cyprus, Challenges and Opportunities' edited by Ahmet Sözen and Jared L Ordway (Security Dialogue Project, Background Paper, Berlin: Berghof Foundation & SeeD 2017)

[34] David Reilly, 'Teaching Conflict Resolution: A Model for Student Research in Cyprus' (2013) 4 Conflict Resolution Quarterly 447, 451

identities and needs have been expressed, frustrated, and threatened, leading to escalation and stalemate".[35] This is also related to the concepts of war and peace. Engstrom states that there is no clear cut line between "war" and "peace" in many contemporary conflicts where there have been attempts to implement TJ policies in very fragile and unstable situations including "before any discernible transition (from 'war' to 'peace')" is in place.[36] There has also been a growing tendency within TJ to include the adoption of broader components which may include not only criminal prosecutions, truth telling, institutional reform and reparations as core interventions, but also commemorative practices and memory work, educational reform and reconciliation initiatives. Such understandings may accommodate further connections between TJ and broader notions of peacebuilding and post-conflict reconstruction.[37] Trending "international judicial interventions in ongoing conflicts has also brought the field of TJ in much closer contact with the related, but distinct, fields of conflict resolution and peacebuilding".[38]

Peacebuilding and human rights have also been part of the agenda of the UN, and in the management of international peace and security. The United Nations Security Council has mandated peace building missions over the course of the last two decades including election observation, provisional administration and coercive rules of military engagement.[39] This has created significant normative and operational overlaps between the traditionally distinct fileds of TJ and peacebuilding theory and practice. As the then UN Secretary General Kofi Annan states: "Justice and peace are not contradictory forces. Rather, properly pursued, they promote and sustain one another. The question, then, can never be whether to pursue justice and accountability, but rather when and how."[40]

Peacebuilding involves the introduction of political, humanitarian, developmental, and human rights programmes and mechanisms to prevent the outbreak, recurrence or continuation of conflict. Their purpose is to pave the way for

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[35] See Ronald J Fisher, 'Cyprus: The Failure of Mediation and the Escalation of an Identity-Based Conflict to an Adversarial Impasse' (2001) 38 JPR 307, 321

[36] Par Engstrom, 'Transitional Justice and Ongoing Conflict', 4 <https://www.researchgate.net/publication/228142666> accessed 14 January 2020

[37] Paul Gready and Simon Robins, 'From Transitional to Transformative Justice: A New Agenda for Practice' (2014) 8 IJTJ 339, 350-352

[38] Engstrom (n 36) 6

[39] See ibid 6-7

[40] Report of the UN Secretary General, 'The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies' S/2004/616 (23 August 2004) para 21; Engstrom (n 36) 6

sustainability in the security, political, economic and justice spheres,[41] relevant for the purposes of this thesis since it involves a "social and associative process that rebuilds fractured relationships between people."[42]

In the words of the UN itself, there is an ongoing "peace process" and/or "peace talks" in Cyprus.[43] The UN acts as the mediator for the resolution of the conflict in Cyprus. Several peace proposals have been debated between the two communities for decades, notably the Annan Plan which was put to simultaneous referendums on both sides of the island in 2004.[44] The content of ongoing negotiations are examined in detail in Chapter 3. However, it is controversial whether positive peace, as defined by Galtung, could be achieved through this UN-sponsored process.

In this respect, the term "post-conflict" should be clarified as well. It simply means termination of hostilities through negotiation or on the battlefield.[45] However, many post-conflict countries have relapsed into conflict rapidly without having achieved a negotiated peace agreement (such as Angola and Sierra Leone), or gradually even many years after they concluded a peace agreement (such as Zimbabwe).[46] Societies that formally conclude hostilities have been described as "post-conflict societies", but, in fact the insecurity and instability marking these countries with the possibility of a relapse into political violence should be cautiously recognized.[47] From this point of view, it is difficult to situate Cyprus within the "post-conflict" framework. The details of the conflict in which the island finds itself will be addressed in Chapter 2. But, it suffices to note here that according to Bryant, partition of the island is marked by a "ceasefire line", acting as a "closed border and preventing Cypriots from crossing to the other side".[48] In other words, Cypriots "live in a prolonged ceasefire, a suspension of war, while ongoing negotiations promise a

[41] UN Security Council, 'Statement by the President of the Security Council' S/PRST/2001/5 (20 February 2001)
[42] Rama Mani, *Beyond Retribution: Seeking Justice in the Shadows of War* (Cambridge 2002) 15
[43] See <http://www.uncyprustalks.org/> accessed 14 January 2020
[44] See Neophytos Loizides, *Designing peace: Cyprus and institutional innovations in divided societies* (Philadelphia: University of Pennsylvania Press 2016) 8-9
[45] Mani, *Beyond Retribution* (n 42) 11; see also Padraig McAuliffe, *Transformative Justice and the Malleability of Post-Conflict States* (Edward Elgar 2017) Chapter 1
[46] Mani, *Beyond Retribution* (n 42) 12
[47] Ibid
[48] Rebecca Bryant, 'Living with Liminality: De Facto States of the Threshold of the Global', (2014) 20 (2) Brown Journal of World Affairs 125, 131

radical change in the status quo".[49] A distinction should also be made between "negative peace" where the conditions which caused violent conflict remain, and a "positive peace" which eradicates the causes of violence, and focuses on broad social issues and the demands of transformative justice.[50] In other words, there is no positive peace in Cyprus, but rather relapsing into conflict is averted meaning that negative peace is in place.[51] Webel calls this an "absence of war and other widespread violence" in which there is also injustice and personal discord and dissatisfaction; a "weak or fragile peace".[52] According to Yakinthou, indicators that each side of the conflict continues to regard the other as "the enemy" include the commemoration and celebration of historical events which are symbols of sorrow or loss for the other community, continuing compulsory military service by both communities, and blame-gaming by political elites about where responsibility for the non-resolution of the conflict lies.[53]

The concepts of peacebuilding, conflict transformation and resolution are therefore complementary in the Cyprus conflict. Conflict transformation has become a priority in TJ literature, encouraged by the UN and the ICTJ on the grounds that TJ should address the root causes of violence, empower citizenry, strengthen democratic structures, and facilitate civic participation.[54] The role of justice in peacebuilding have also become important for TJ.[55] Furthermore, it should strengthen societal bonds and relationships through prioritization of social and reparatory justice, which in turn would require a greater and more long-term commitment. The mainstream literature characterises TJ as involving parallel and complementary processes of justice, truth, reparations, institutional reform, and guarantees of non-recurrence,[56]

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[49] Bryant, 'History's Remainders' (n 1) 683
[50] See Johan Galtung, 'Violence, peace, and peace research' (1969) 6 (3) JPR 167
[51] See ibid
[52] Charles Webel, 'Toward a philosophy and metapsychology of peace' in Charles Webel and Johan Galtung (eds) *Handbook of Peace and Conflict Studies (*Routledge 2007) 11
[53] Christalla Yakinthou, *Political Settlements in Divided Societies,Consociationalism and Cyprus* (Pelgrave Macmillan 2009) 109
[54] The International Center for Transitional Justice, 'What is Transitional Justice?' https://www.ictj.org/sites/default/files/ICTJ-Global-Transitional-Justice-2009-English.pdf; United Nations, 'What is Transitional Justice? A Backgrounder.'https://www.un.org/peacebuilding/sites/www.un.org.peacebuilding/files/documents/26_02_2008_background_note.pdf)
[55] Ibid
[56] Paige Arthur, 'How "Transitions" Reshaped Human Rights: A Conceptual History of Transitional Justice' (2009) 31 (2) Hum Rts Q 321, 325; Anna C Patel, 'Transitional Justice, DDR, and Security Sector Reform' in Anna C Patel, Pablo De Greiff and Lars Waldorf (eds) *Disarming the Past: Transitional Justice and Ex-combatants.* New York: Social Science Research Council 2009) 268-271; Pablo De Greiff 'Articulating the Links between Transitional Justice and Development: Justice and

generally implemented through a set of mechanisms, namely, trials, truth commissions, reparations and institutional reform.[57] There has also been increased attention on the economic components of violence[58] expressed in terms of counteracting the "constructed invisibility of economic questions".[59] This more expansive understanding of TJ has given rise to terms such as "fourth generation transitional justice"[60] or "transformative transitional justice".[61] It is not necessary to engage into a detailed discussion of whether transformative justice is a new field or a sub-field of TJ. It suffices to state that this thesis considers TTJ as the last stop to be achieved and, thus, it has been necessary to consider it in this thesis as well.[62]

TJ and TTJ have been identified as the frameworks for this study for two reasons. First, the ongoing negotiations in Cyprus illustrate that a future peace agreement would aim to rectify grievances between the communities on the island. Some measures of TJ were already addressed in the Annan Plan in 2004, the details of which are considered in Chapter 3. These include restitution and compensation for property loss and a proposed Reconciliation Comission. Currently, initiatives like the Committee on Missing Persons (CMP) and education initiatives continue regardless of the state of the peace process. According to Bozkurt and Yakinthou, TJ issues are therefore not a far cry from what is already being done in Cyprus. A much closer analysis of what is needed by those directly affected by the conflict, as well as the tools to create space for multiple perspectives about the past and debates about visions of the future are now, therefore, required in order to construct an overarching

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Social Integration' in Pablo de Greiff and Roger Duthie (eds) *Transitional Justice and Development: Making Connections* (New York: Social Science Research Council 2009) 33-41; Clara Sandoval Villalba, 'Transitional Justice: Key Concepts, Processes and Challenges' (Institute for Democracy & Conflict Resolution – Briefing Paper, 2011) 3-10; 'Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence' A/69/518 (14 October 2014); Report of the UN Secretary General, 'The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies' S/2004/616 (23 August 2004) 4

[57] Villalba (n 56) 4-10

[58] James L Cavallaro and Sebastian Albuja, 'The lost agenda: Economic crimes and truth commissions in Latin America and beyond' in Kieran McEvoy and Lorna McGregor (eds) *Transitional Justice from Below: Grassroots Activism and the Struggle for Change.* (Oxford, 2008); Ruben Carranza, 'Plunder and Pain: Should Transitional Justice Engage with Corruption and Economic Crimes?' (2008) 2 (3) IJTJ 310; Dustin N Sharp, 'Addressing Economic Violence in Times of Transition: Toward a Positive-Peace Paradigm for Transitional Justice'. (2012) 35 Fordham Int'l LJ 780

[59] Zinaida Miller, 'Effects of Invisibility: In Search of the "Economic" in Transitional Justice' (2008) 2 (3) IJTJ 266, 280

[60] Dustin N Sharp, 'Interrogating the Peripheries: The Preoccupations of Fourth Generation Transitional Justice'. (2013) 26 Harv Hum Rts J 149

[61] McAuliffe (n 45)

[62] Lauren M Balasco 'Locating Transformative Justice: Prism or Schism in Transitional Justice?' Review Essay (2018) 12 IJTJ 368

strategy, and ensure policy coherence.[63] Secondly, this thesis is concerned with the property rights of the displaced GCs. As noted previously, property disputes are one of the most important elements of the Cyprus problem, leading, from time to time, to disruption of the peace process. A core issue here concerns the type of justice and reparations (e.g. remedying loss of property); key issues in TJ undertakings. As a serious social and political problem in Cyprus, particularly for the GCs (the details of which will be addressed in Chapter 2), I attempt to consider how the negative impact of ongoing violation of property rights may be reduced.

Although the concept of transformative justice will be addressed in Chapter 2, it would be useful to consider it briefly here. For example, Lambourne – one of the first to articulate a model of transformative justice - encourages the use of the term "transformative justice" indicating that to account for the contexts that may impact on participants' needs and expectations of justice it "implies long-term, sustainable processes" instead of an "interim process that links the past and the future".[64] She also argues that analysing TJ in terms of its contribution to peacebuilding enables a more holistic approach that takes into account the needs of conflict participants and the links between dealing with the past and the future,[65] a feature which makes this paradigm especially relevant for Cyprus. Proposing to reframe TJ as "transformative justice", Lambourne states that it not only deals with the past but also establishes conditions to provide for justice with a longer term vision than the term "transitional justice" offers.[66] If the values of any given new regime are to take root, the culture in which they operate should be transformed.[67] Lambourne's transformative justice model, has also been situated within the peacebuilding paradigm, and blends elements of retributive and restorative justice.[68] In her definition, socioeconomic justice "incorporates the various elements of justice that relate to financial or other material compensation, restitution or reparation for past violations or crimes

[63] See Bozkurt and Yakinthou (n 13) 3-4, 35-39
[64] Wendy Lambourne, 'Transitional Justice and Peacebuilding after Mass Violence' (2009) 3 International Journal of Transitional Justice 28, 30; see also Lauren Marie Balasco, 'Locating Transformative Justice' (n 62) 371
[65] Lambourne (n 64) 29
[66] Ibid 45
[67] Daly (n 2) 73
[68] Wendy Lambourne, 'Transformative justice, reconciliation and peacebuilding'in Susanne Buckley-Zistel, Teresa Koloma Beck, Christiane Braun and Friederike Mieth (eds) *Transitional Justice Theories (*Abingdon: Routledge 2014) 21-22

(historical justice) and distributive or socioeconomic justice in the future (prospective justice)".[69]

Given the choice of the IPC in Cyprus as a case study, it is useful to address how the IPC Law aims to remedy past injustices:

> *The purpose of this Law is to regulate the necessary procedure and conditions to be complied with by persons in order to prove their rights regarding claims in respect to movable and immovable properties within the scope of this Law, as well as, the principles relating to restitution, exchange of properties and compensation payable in respect thereof, having regard to the principle of and the provisions regarding protection of bizonality, which is the main principle of 1977-1979 High level Agreements and of all the plans prepared by the United Nations on solving the Cyprus Problem and without prejudice to any property rights or the right to use property under the Turkish Republic of Northern Cyprus legislation or to any right of the Turkish Cypriot People which shall be provided by the comprehensive settlement of the Cyprus Problem.*[70]

This extract draws attention to two important points. First of all, the Law provides for the procedure and conditions for persons claiming to have rights over abandoned movable and immovable properties, and remedies; i.e. compensation, restitution and exchange. Secondly, the Law not only refers to principles envisaged by the 50 year-old UN negotiation process, but also to a possible future comprehensive settlement agreement for the solution of the Cyprus problem. Persons claiming to have rights in this respect can well await a political solution or, instead, apply to the IPC. Since property rights of the displaced have still been the subject of negotiations under the auspices of the UN, the IPC process is a form of interference with respect to the matter. On the other hand, since it is established to provide for a form of justice, TJ and TTJ have ben considered as the most suitable frameworks for the purposes of this thesis. This is not to say that the thesis immediately considers the IPC as a transformative mechanism, but investigates its potential as a step towards TTJ. Because, one should not latch duties to an institution more than it can deliver.

[69] Ibid 28-29
[70] Article 3

III. Methodological Issues

A. Doctrinal Analysis

The first stage of the research involved analysis of the existing secondary literature on the history and politics of Cyprus. This included academic books, journal articles, UN documents, NGO reports, evaluation reports, press news and reviews. The research also relied on examination of a selection of primary data. The materials included relevant national legislation in Cyprus (Constitution and legislation on property) and cases of the ECtHR brought by both GCs and TCs to shed light on how and why the IPC was established. *Loizidou v Turkey* is the landmark case which set the precedent for future cases originating from Cyprus, *Xendies-Arestis v Turkey* led to the establishment of the IPC in line with the principles set by the ECtHR and finally, with *Demopoulos and others v Turkey* the ECtHR accepted the IPC as an effective remedy for GC property rights. The same applies for the cases brought to the ECtHR by TCs. *Niazi Kazali and others v Cyprus* was selected as the main case setting out ECtHR's the key principles with an examination of the legislation applied in the RoC. Cases on post-communist countries, pointed as "transitional property cases" in literature relating to the ECHR were also examined to shed light upon the ECtHR's stance in this respect. This approach was chosen, not for a comparative analysis, but to set the background for property restitution in the ECtHR context and because the IPC has been a product of litigation there. The right to return home in international law, restitution in transitions and the passage of time have also been addressed through reference to other relevant countries and cases. Many sources in this Chapter include both TJ and human rights literature.

The research is both evaluative and descriptive.[71] In this respect, history and political science were used to complement empirical/socio-legal research.[72] The research findings rely on all the data used.

B. Empirical and Ethical Challenges

Yin has described case study methodology as a distinctive means of empirical enquiry particularly suitable for exploring the "how" and "why" of contemporary

[71] See Ian Dobinson and Francis Johns 'Qualitative Legal Research' in Mike McConville and Wing Hong Chui (eds) *Research Methods for Law* (Edingburgh University Press 2010) 32

[72] Mike McConville and Wing Hong Chui, *Research Methods for Law* (Edingburgh University Press 2010) 5

phenomena within a real-life context.[73] In this thesis I attempt to empirically examine the political and socio-legal dynamics and trajectory of the IPC established in north Cyprus in 2005 through a TJ framework. It is essentially a case study, which uses detailed, in-depth contextual analysis to develop a better understanding of TJ in its "real-world context".[74]

The research identifies what TJ tends to achieve and considers whether it could contribute to contexts such as that of Cyprus, a divided country where negative peace is preserved, and, at the same time tries to deal with a justice issue. I address two central themes. The first is how TJ could contribute to the work of the IPC. The second is to see if the work of the IPC could contribute to the Cyprus problem. The discussions and findings of this research can have a generalizing function in terms of its contribution for public policy debates in Cyprus and implications for other TJ contexts.[75]

The question of "single or multiple-case designs?" has been raised in the literature. Although all designs can lead to other case studies, multiple-case designs (comparative case studies) may be preferred over single-case designs as they provide for a more reliable basis for generalization.[76] A multiple-case (comparative) study could have been the approach chosen if the purpose of my research had been to take the example of Cyprus to test TJ as a theory. However, my purpose has been to assess TJ for its possible application in Cyprus. I nevertheless considered making comparisons with TJ experiments in Colombia, Bosnia and Herzegovina (BiH) and Northern Ireland but several issues led to the elimination of all these cases. Colombia's 2011 Victims Law, a TJ reparation process seeking to return land to people displaced by violence since 1991, has been an example of TJ with reparations and GNR elements. However, the conflict in Colombia was more a result of historic land inequality where in Cyprus, the property issue is a consequence of ethnic conflict and partition. By contrast, BiH was an ethnic conflict with property rights having crucial importance and impact as in Cyprus. The Dayton Agreement ending the Bosnian conflict introduced a strong right to return for the displaced to reverse ethnic cleansing, Annex 7, of which established a Commission for Real Property

[73] Robert K Yin, *Case Study Research Design and Methods* (5th edn Sage Publications 2014) 16
[74] Ibid
[75] Ibid 42, 68
[76] Robert K Yin, *Case Study Research Design and Methods* (3rd edn Sage Publications 2002) 53; see also Catherine Hakim, *Research Design: Successful Designs for Social and Economic Research* (Routledge 2000) 71, 53

Claims of Displaced Persons and Refugees. Initially, I thought that the work of this Commission could be a good comparison with that of the IPC. However, the similarities are superficial since the BiH Commission was the result of an internationally- brokered peace agreement with no parallel in Cyprus. In Northern Ireland, although displacement occurred as a result of violence rather than, for example state appropriation, this issue has never been central to the peace process. In the final analysis, this thesis considered the IPC as a specific institution in the contexts of the Cyprus problem and TJ without exploring other ostensible parallels, which, in closer inspection, turned out to be quiet different. One of the conclusions of this research is that the IPC is unique. Nevertheless, lessons from it could be applicable in other conflict contexts in designing processes for housing, land and property rights.

An alleged weakness of case study methodology is its objectivity and the vulnerability as being shaped by the researcher's own interests and perspectives.[77] Working as a lawyer at the IPC, this was a concern for me. To address this, it was important to be aware of retaining as much of an objective perspective as possible throughout. For this, semi-structured interviews were included with key-players involved directly or indirectly in the IPC's work. Prior to initiating the empirical part of the research, approval was sought and obtained from the University of Bristol Law School Research Ethics Committee.

As Halse and Honey state, "semi structured interviews are inherently emergent, reflexive, and messy, and the planned focus of an interview can easily shift as new issues and accounts emerge",[78] an observation confirmed by my own experience. Such interviews can assist the process of information gathering by allowing for the building of rapport and interaction with each participant, gauging how deep questioning might go, and the direction it might take.[79] I used semi-structured interviews due to their flexibility as, for instance, being able to respond to interviewees' particular area of knowledge and further exploration of additional

[77] Martyn Hammersley 'Case Study' in Saul Becker, Alan Bryman and Harry Ferguson (eds) *Understanding Research for Social Policy and Practice, Themes, Methods and Approaches* (2nd edn Bristol: Policy Press) 280

[78] Christine Halse and Anne Honey, 'Unraveling Ethics: Illuminating the Moral Dilemmas of Research Ethics'(2005) 30(4) Signs 2141, 2148

[79] Nigel Fielding and Hillary Thomas, 'Qualitative Interviewing' in Nigel Gilbert (ed) *Researching social life* (2nd edn London: Sage 2006)

themes that could arise.[80] Hakim advises that as case studies involve specialised interviewing of informants, discussion should take place on "a basis of equality"[81] requiring the researcher to have a good knowledge of the subject matter. The selection of participants, and drafting of questionnaires, were guided by my many years of professional work experience and research related to the subject matter.

Interviews were conducted with four categories of respondent:

- Applicants before the IPC. Originally, I intended to conduct five to ten such interviews.
- Lawyers/Representatives of applicants pursuing cases before the IPC. Six lawyers having the highest number of such applications were envisaged in order to achieve as much information as possible on a variety of claims.
- The IPC President and Vice-President of the IPC facilitating their right of reply.
- Representatives of Political Parties from both north (the TRNC) and south (the RoC) of the island according to the percentage of their electoral vote.

In total, 22 interviews, carried out between November 2017 and July 2018 each taking about an hour to an hour and a half, were conducted. Non-probability, purposive and snowball sampling was used to identify the most relevant interview subjects.[82]

Purposive sampling technique, used for the selection of interview participants, allows for an intentional selection of participants that can best generate the understanding of the specific social process being studied.[83] Hakim states that collection of data contributing to case study methodology may involve "specialised interviewing of informants, professionals and organisational or public role-holders".[84] In this manner, purposive sampling permitted the selection of interviewees according to their specific experience and knowledge of proceedingsbefore the IPC and the Cyprus problem in general. To understand the context further, some information was also sought regarding the number of

[80] Colin Robson, *Real World Research* (2nd edn Malden: Blackwell Publishing 2002)
[81] Hakim (n 76) 73
[82] Ranjit Kumar, *Research Methodology, A Step-by-Step Guide for Beginners* (Sage 1996) 160-162
[83] Sara Arber 'Secondary analysis of survey data' in Nigel Gilbert (ed) *Researching social life* (2nd edn London: Sage 2006)
[84] Hakim (n 76) 73

applicants at the IPC and the kinds of properties concerned. As of 26 January 2020 6,314 applications have been lodged with the IPC, 990 of which have been settled either through formal hearing or friendly settlement. Some applications concern more than one applicant or more than one property in one or more districts. Properties might include a house, a field, a building plot, a shop, a building or a hotel.[85] Considering the number of applications and the variety of properties, it is unlikely that respondents could be identified as a result of participating in the research. I intended to select as respondents both the original owners of the properties in 1974 who were displaced (first generation) and their legal heirs (second/third generation etc.). These two groups would have allowed me to assess the difference of approach, if any, between them.

The purpose of the applicant interviews was to gain insight into aplicants' motivation to apply to the IPC rather than await a political solution to the Cyprus problem, how they perceive the IPC as a remedy, what factors affected their preference for a particular remedy (compensation, restitution or exchange of property), whether they felt hardship or distress during the process before the IPC and what they thought about reunification of Cyprus and "return" to their properties. Assistance was sought in selecting and contacting applicants as interviewees since it would have been unethical to contact them through information available at the IPC itself. Furthermoe, as a lawyer employed by the IPC, applicants might have felt obliged to participate in the research because of my professional position. I, therefore, communicated with those lawyers/representatives active in the highest number of applications before the IPC who could lead me to applicants willing to cooperate with my study. This part of sampling design can be considered as snowball sampling, and the rest as purposive sampling. However, in the event I was only able to conduct three such interviews. Having considered leaving them out altogether I nevertheless decided not to on the grounds that they nevertheless complement the information obtained through interviews with lawyers/representatives.

By contrast, I interviewed six lawyers and/or representatives pursuing cases at the IPC with approximately 2,900 applications in total. These provided me, among other things, with an insight into the motivation of applicants and their experience there. Lawyers/representatives pursuing cases at the IPC might have not felt

[85] List of finalised cases can be found at http://tamk.gov.ct.tr/dokuman/Bitenler.pdf

comfortable with participating if they thought their ongoing applications might have been affected by having been commented on the IPC's work. In order to avoid this possibility, I attempted to ensure anonymity. However, among the lawyers to be interviewed were those who had applied to the High Administrative Court (for appeal) or to the ECtHR. Lawyers were therefore informed that it might be difficult to provide complete anonymity. According to the literature, in such circumstances, researchers are advised to obtain written consent that an individual wishes to waive their right to anonymity.[86] Considering that this might cause difficulties, the consent forms stated that in case the data resulted in their identification, those concerned would be able to see what data and/or quotes would be used for this study.

I also carried out interviews with both the President and the Vice-President of the IPC mostly about the effectiveness of the procedure. It was not possible to guarantee anonymity and they were informed accordingly. In any case, this did not present a particular problem since, from time to time they participate in press interviews. Again, the participants were able to see what data and/or quotes would be used in the research.

Since one of the wider objectives of my thesis is to discover the relationship between the IPC and Cyprus problem, interviewing political parties in north and south Cyprus to canvas their views on the negotiations for a solution of the Cyprus problem, the contribution of the IPC and their opinions on the process at the IPC and the property dispute in general was of considerable importance. I managed to interview five political parties with representatives in the Parliament in the south and all political parties in the north. Currently there are six political parties at the General Assembly of the TRNC and eight parties at the House of Representatives of the Republic of Cyprus. I contacted the President, the Secretary General or the Spokesperson of each political party to identify suitable respondents. The interviews were carried out with either the President of the Party or another representative to whom I was referred. Information I gathered through the interviews with political parties can be considered as representing the views of some key players and stakeholders capable of providing insight into the process, a form of purposive rather

[86] Rose Wiles, Graham Crow, Sue Heath, and Vikki Charles 'The Management of Confidentiality and Anonymity in Social Research' (2008) 11 (5) International Journal of Social Research Methodology 417, 422

than random sample selection.[87] In the event this constituted one of the most valuable dimensions of the interviews. Again, it was not possible to guarantee anonymity for this group and they were informed accordingly. In any case, this did not present a particular problem since, from time to time they also participate in press interviews. Again, the participants were able to see what data and/or quotes would be used in the research.

The main problem with the interviews was distinguishing between when the intervieews were neutrally describing an issue or expressing their own opinion about it. Thus the importance of triangulation has been at the fore and different sources of evidence (as explained above; i.e. literature, cases, news clippings) were used to assess the credibility of the information gathered and to highlight the variety of different narratives on the same set of events.[88] As Yin points out, a case study such as mine could combine personal experience with other sources of evidence.[89] While it cannot be considered within the framework of "observation", it nevertheless falls within the framework of a "well documented" study. While not resorting to participant observation, carrying out interviews was a choice made to reduce biases and further objectivity and reliability.

Having said all this, the fact that the respondents would know that I work at the IPC as a lawyer was an ethical challenge. By sharing their experiences with me, participants could mistakenly expect to recruit me to solve their problems.[90] In my case, it was made clear that I do not have the power to change what applicants may deem inadequate about the IPC.

In order to ensure research integrity, I ensured that interviewees made an informed decision regarding participation by supplying each participant with an Information Sheet containing such information as research purpose, proposed use of data and what participation would entail. All interviewees were informed that their participation in the study was voluntary. Each participant was provided with and asked to sign a consent form requiring the interviewee to confirm they had been provided with details of the study, given the opportunity to ask questions and discuss

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[87] Matthew B Miles and A Michael Huberman, *Qualitative Data Analysis: An Expanded Sourcebook* (2nd edn, Sage Publictaions 1994) 27; see also Catherine Marshall and Gretchen B Rossman, *Designing Qualitative Research* (6th edn, Sage Publications 2016) 73

[88] See Yin (n 73) 118

[89] Ibid 119

[90] See Joyce Kennedy, 'Grey Matter: Ambiguities and Complexities of Ethics in Research' (2005) 3(2) Journal of Academic Ethics 143, 147

the research, and that they had received sufficient information to make a decision regarding participation. Anonymity of data attribution was guaranteed and where not possible, this was also explained to participants as addressed above. The right to anonymity was waived by all but two lawyers/representatives whose names were replaced by pseudonyms. One of the applicants declared that his name could be revealed and one expressed that he would not mind, yet anonymity for the latter was preserved. For other participants, it was not possible to guarantee anonymity and they were informed accordingly. All were able to see, read and approve what data and/or quotes which might be used in the thesis. Names and any other details of interviewees have been kept in a separate file so that this information could not be linked to interview notes and breach participants' anonymity. They were further informed that they could withdraw at any point, and should they change their mind on completion of the interview, they could also withdraw from the study at any time up to and including submission of the thesis. I also informed them about my involvement in the IPC as a lawyer and emphasised that I could not assist them with their own cases.

I took notes during the interviews but they were not electronically recorded.

The Ministry of Interior did not respond to my invitation letter of 23 July 2018 to be interviewed for this project.

IV. Thesis Structure

A brief introduction to Cyprus problem, the background to the property issue and its relevance to TJ has been made in this Chapter. In Chapter 2, I seek to describe and analyse in detail the state of partition of the island and the displacement of almost half its population institutionalizing a culture of resentment. To this end, I begin by addressing the history of the island to establish how the ethnic division originated and developed. The legal framework regarding the GC properties left in the north following partition in 1974 is also examined. Following this, I offer a TJ framework to shed light upon the goals and problems in the field. Chapter 3 then considers negotiations and mediation efforts seeking to resolve the Cyprus problem under the auspisces of the UN. In Chapter 4, the role of property restitution in other transitions in post-Soviet Central and Eastern Europe in particular, "property restitution" and "the right to return", and the ECtHR's approach both in respect of transitional

contexts in general and of Cyprus property cases are examined. This was undertaken as a result of the fact that the IPC has emerged from a human rights background and is a product of the ECtHR. Using a wider range of sources, i.e. semi-structured interviews, how the IPC has fared in practice is addressed in Chapter 5.

Finally, Chapter 6 draws the following main conclusions. The IPC, a mechanism for GCs in search of remedies for their properties remaining in the north, could have provided a space for the building of trust. The problems the IPC has faced, indicate that it is important to understand the extent to which institutions, processes and developments affect the situation in Cyrpus positively, negatively or not at all. The potential of the IPC in this regard is important since it serves as an example for a pre-solution mechanism to be established both for GC and TC properties abandoned in both sides of the island, thus paving the way for delinking the issue of property from a wider solution of the Cyprus problem.

Chapter 2 Cyprus Problem and Transitional Justice

I. The Cyprus Problem

A. Historical Background

Since 1974, the Mediterranean island of Cyprus has been ethnically divided, with a UN buffer zone separating TCs in the north from GCs in the south.[1] The historical background of the island is marked with the interethnic struggle between Greek and Turkish Cypriot communities. Although the line dividing the island dates back to 1974, the island's history sheds light on the roots of the division between the island's two main communities that has existed long before 1974.[2] GC and TC history narratives are similar: a model of ethnic nationalism focusing on the suffering of the self where the suffering of others is silenced.[3]

Cyprus has often been invaded, bought, sold, and changed hands from one ruler to another without its inhabitants ever having been consulted.[4] Between 1571 and 1878, it was ruled by the Ottomans and Muslims migrated from southern Anatolia following the initial conquest.[5] The number of TCs has generally been smaller than Greeks.[6] The Ottomans administered the island under the *millet* system where communities were given rights and privileges as well as electing their own

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[1] Jenna C Borders, 'Another Door Closed: Resort to the European Court of Human Rights for Relief from the Turkish Invasion of 1974 May No Longer Be Possible for Greek Cypriots' (2010) 36 NCJ Int.l & Com Reg 689, 690

[2] There are also Maronites, Armenians and Latins considered as minorities in Cyprus. In this thesis, reference was made to two major communities of the island. This should not be understood as ignoring the existence of these groups as members of Cyprus, but because the main ethnic struggle was between the Greek and Turkish Cypriots which was also formalised in the post-independence (1960 – the Republic of Cyprus) period when these groups were compelled to become members of either dominant community.

[3] See Yiannis Papadakis, 'Narrative, Memory and History Education in Divided Cyprus: A Comparison of Schoolbooks on the "History of Cyprus"' (2008) 20 (2) History & Memory 131

[4] Zaim M Necatigil, *The Cyprus Question and the Turkish Position in International Law* (2nd edn, Oxford University Press 1989) 1 (Among the forces ruling the island are Assyrians (707-650), Egyptians (570-546), Persians (546-333), Ptolemies (320s-58), Romans (58BC-330AD) and Venetians (1489-1571). See also Borders (n 1) 692 where the author claims that the impact of Greek rule persisted throughout the centuries, covering also 300 years of control by the Ottoman Empire. Necatigil objects to the claim by Greek Cypriots' that they ever controlled the *whole* island and that the Greek rule was exclusive. However, it should be added that the Greek Orthodox Church used to run its own affairs, especially in the field of education, where this "fortified the Church and the cohesion of the ethnic Greek Population" 1)

[5] Niyazi Kızılyürek and Tufan Erhürman, *Kıbrıs'ta Federalizm: Öznesini Arayan Siyaset* [Federalism in Cyprus: Politics in Search of Its Subject] (Işık Kitabevi 2009) 57

[6] Necatigil (n 4) 1; According to the census of 1960, 441,656 of the population of Cyprus were Greeks, 104,942 were Turks and 26,968 were other ethnicities such as Maronites, Armenians and Latins.

judicial and administrative officials, a system not based on "ethnicities" but on "religious identities".[7]

In 1878, as part of the Convention of Defensive Alliance between Great Britain and Turkey against Russian expansion, Turkey agreed to hand over Cyprus to be occupied and administered by the United Kingdom (UK).[8] With the British rule (1878-1960) the *millet* system ended, but prior autonomy of religious communities continued.[9] The process of modernization of multiethnic traditional social structure of Cyprus gave rise to two distinct and opposing national projects and national consciousnesses. During this period, and particularly since the beginning of the twentieth century, Cypriot society evolved along various lines, ranging from anticolonial struggle against the British to interethnic tensions between GCs and TCs.[10] In the early 20th century the GC aspiration of union of Cyprus with "motherland Greece" *(enosis)*, and the TC aspiration of "union" with "motherland Turkey" in the form of partititon of the ethnically mixed Cypriot society to establish a purely separate Turkish state *(taksim)*, became the basic goals of the island's conflicting nationalisms,[11] with Turkish nationalism generally being "a counter nationalism" to Hellenic *enosis*.[12] As *enosis* gained momentum, the Greek Cypriot Orthodox Church, under the leadership of Archbishop Makarios III, held a plebiscite on 15 January 1950 among GCs, excluding TCs where 96 per cent voted in favour of *enosis*.[13] The result was referred to the UN Secretary General who like Great Britain and Greece at that time remained inactive and did not take the issue on their agenda.[14] Following this development and to fight against British control over Cyprus, GCs established EOKA (National Organization of Cypriot Fighters), a paramilitary force, in 1955 and embarked upon violent activities.[15] The British

[7] Kızılyürek and Erhürman (n 5) 58
[8] See Kypros Chrysostomides, *The Republic of Cyprus: A Study in International Law* (Martinus Nijhoff Publishers 2000) 20
[9] Niyazi Kızılyürek and Tufan Erhürman (n 5) 58
[10] Ayla Gürel, Mete Hatay and Chrystalla Yakinthou, 'Displacement in Cyprus: Consequences of Civil and Military Strife Report 5' (Prio Cyprus Centre 2012) 5, 8
[11] Niyazi Kızılyürek and Sylvaine Gauter, 'The Politics of Identity in the Turkish Cypriot Community and The Language Question' (2004) International Journal of the Sociology of Language 37, 38
[12] Niyazi Kızılyürek, *Milliyetçilik Kıskacında Kıbrıs* [Cyprus in the Claws of Nationalism] (İletişim Yayınları 2002) 77
[13] Necatigil (n 4) 6; see also see also Frank Hoffmeister, *Legal Aspects of the Cyprus Problem Annan Plan and EU Accession* (Martinus Nijhoff Publishers 2006) 1; see also William Mallinson, *Partition Through Foreign Aggression: The Case of Turkey in Cyprus* (University of Minnesota Mineapolis 2010) 20
[14] Hoffmeister (n 13) 2
[15] Borders (n 1) 693; see also Necatigil (n 4) 6-7

attempted to suppress EOKA through harsh tactics with TCs joining the auxiliary police to help quell the rebellion.[16] Although EOKA refrained from targeting TCs, fearing Turkish involvement in the conflict, killings of TC auxiliary police were taken as an attack on TCs as a whole, and reprisals became common.[17] In the 1950s, Turkish nationalism became the ideology, supported by the majority, popularized by a meeting held by 3,000 people in 1958 with the slogan "either *taksim* or death".[18] As in the words of Kızılyürek and Gauter, "[f]rom now on, Turkish Cypriot nationalism ceased to be merely a romantic attachment to 'mother Turkey' and […] gradually became a separatist ideology and cultivated the myth that two communities cannot live together."[19]

The expectation of TC leaders that the campaign of terror for *enosis* would sooner or later be directed against the TC community, led to the establishment of the *Volkan*, which later became *TMT* (*Turkish Resistance Organizatio*n).[20] However, largely because TCs were economically weaker than their GC counterparts, and unlike *enosis* which evolved more progressively and gradually, *taksim* took a reactionary form.[21] Turkey and the UK have each been accused of contributing to these developments in pursuit of their respective national interests.[22] Some scholars also maintain that the leaderships of both communities have influenced the creation and perpetuation of the conflict.[23] Kızılyürek states that, under these circumstances it had not been difficult for the two communities to re-engage with the establishment of the RoC.[24] However, "the battle of status" continued and led to the collapse of the Republic.[25]

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[16] Borders (n 1) 693; Gürel, Hatay and Yakinthou (n 10) 5
[17] Gürel, Hatay and Yakinthou (n 10) 5
[18] Bülent Evre, *Kıbrıs Türk Milliyetçiliği: Oluşumu ve Gelişimi* [Turkish Cypriot Nationalism: Its Creation and Development] (Işık Kitabevi 2004) 135
[19] Kızılyürek and Gauter (n 11) 45
[20] Necatigil (n 4) 7; Borders (n 1) 694
[21] Niyazi Kızılyürek, *Bir Hınç ve Şiddet Tarihi: Kıbrıs'ta Statü Kavgası ve Etnik Çatışma* [A History of Vengeance and Violence: Battle of Status and Ethhic Conflict in Cyprus] (İstanbul Bilgi Üniversitesi Yayınları 2016) 245-7; see also Chrystalla Yakinthou, *Political Settlements in Divided Societies Consociationalism and Cyprus* (Palgrave Macmillan 2009) Chapter 2
[22] Ibid 247
[23] Maria Hadjipavlou, 'The Cyprus Conflict: Root Causes and Implications for Peacebuilding' (2007) 44 Journal of Peace Research 349, 358; See also Charles Taylor, *Nationalism and Modernity in Ronald Beiner Theorizing Nationalism*, State University of (New York Press, Albany 1999) 237-8; See also Ioannis D Stefanidis, *Isle of Discord, Nationalism, Imperialism and the Making of Cyprus Problem* (Hurst & Company, London 1999) Chapter 6-7
[24] Kızılyürek 2016 (n 21) 248
[25] Ibid

The UN addressed the Cyprus problem between 1954 and 1958. During the General Assembly debates about the Greek claim for *enosis* in this period, the General Assembly urged the parties to seek a peaceful, just and democratic solution in line with the UN Charter.[26] In February 1959, the Greek and Turkish Prime ministers reached an agreement in Zurich following consultations with Cypriot leaders for the establishment of an independent state of the RoC.[27] However, following the establishment of the Republic the limited participation of the community leaders from each of the two communities paved the way for substantial unrest and dissatisfaction.[28] As in the words of Mallinson, Cypriots were hardly involved in deciding their own future.[29] In this respect, it can be said that the establishment of the RoC was mainly driven mainly by the UK, Greece and Turkey, and was not desired either by the TC or the GC leaderships. Thus, with both nationalisms in Cyprus ascendant, the Constitution of the RoC of 1960[30] did not lead to reconciliation between them but was perceived to be "the interim period for the goals of *taksim* and *enosis*" to be realised.[31]

B. The Republic of Cyprus

The RoC was a result of the framework envisaged by the London and Zurich Agreements drafted by Britain, Greece, and Turkey who agreed to act as guarantor powers of the sovereignty and territorial integrity of the new state.[32]

Its Constitution was criticised for being too rigid and complicated with its strong bi-communal character displeasing GCs who have always seen TCs as a "minority" population rather than having a politically equal status with the GCs.[33] Following its establishment, Archbishop Makarios declared that the national aims of

[26] UN General Assembly Resolution 1287 (XIII) 5 December 1958
[27] Necatigil (n 4) 9
[28] Borders (n 1) 694
[29] Mallinson (n 13) 26
[30] For an outline of the system and /or provisions of the 1960 Constitution see Necatigil (n 4) 17; see also Chrysostomides (n 8) 26-30
[31] Meltem Hamit, 'Turkish Cypriots and Their Others: An Analysis of Narratives About Greek Cypriots and Turkiyeliler' (Thesis Submitted to the Graduate School of Social Sciences of Middle East Technical University for the Degree of Master of Science, July 2008) 42 <https://etd.lib.metu.edu.tr/upload/12609727/index.pdf> accessed 7 July 2016
[32] Hoffmeister (n 13) 6
[33] Chrysostomides (n 8) 30; Kızılyürek and Erhürman (n 5) 54; Kızılyürek 2016 (n 21) 250

the GCs were unalterable and that *enosis* had to be achieved.[34] In the meantime, Makarios put forward a 13-point proposal[35] in November 1963 to amend the Constitution which Turkey and TCs rejected stating that it left the Turks "at the mercy of the Greeks".[36]

Chrysostomides, who rejects Necatigil's claim that the 13-point proposal was a precursor to the abolition of the 1960 Treaties and the beginning of a journey towards union with Greece, claims this is a biased interpretation of the conflict which followed.[37] In this respect Chrysostomides refers to a document signed by Vice President Dr Küçük and President of the TC Communal Chamber Denktaş, setting out the parameters for partitionist aims.[38] Different narratives of historical events and their presentation show each side's tendency to blame the "other", an obstacle to reconciliation. Chrysostomides asserts in this regard that it would be more equitable and historically correct to admit that "in both communities there were forces which wanted confrontation".[39]

The TC leadership and TMT had considered the Zurich and London Agreements as a temporary solution where their main aim was still *taksim* as reflected in official documents.[40] The GC position was similar for *enosis*, where the GC leadership was influenced by AKRITAS, the name of the Plan to reach *Enosis* as well as for the organisation set up after a short period of time following the establishment of the RoC.[41] Thus, the irreconcilable position of TC and GC elites led to the collapse of the Republic.[42]

Tensions rapidly expanded through the summer and autumn of 1963 and an incident between the TCs and GCs sparked the outbreak of inter-communal violence.[43] Although ethnic segregation had taken place in the 1910s, and had further increased during 1955-1959, the displacement of many Greek and Turkish Cypriots

[34] Necatigil (n 4) 9 (The author refers here to various statements made by Makarios)
[35] Main points of disagreement that gave rise to the proposal have been the creation of separate municipalities by the TCs in 5 designated districts, amalgamation of the police and the gendarmerie as proposed by the GCs and the issue of taxation on the basis of local self-administration as proposed by the TCs.
[36] Necatigil (n 4) 25; for details see Hoffmeister (n 13) 12-14
[37] Chrysostomides (n 8) 34 (The author refers to Necatigil) See also Necatigil (n 4) 20-31
[38] Ibid 34
[39] Ibid 35
[40] Kızılyürek 2016 (n 21) 304
[41] See ibid 286-296. Kızılyürek defines the Plan of Akritas as a "text of vengeance and a strategy for revenge".
[42] Ibid 313; see also Yakinthou, *Political Settlements* (n 21) Chapter 2
[43] Necatigil (n 4) 29

reached its peak following the inter-communal strife of the 1960s.[44] The estimates on the number of deaths between 1963–4 vary.[45] 109 villages, most of them TC or mixed villages, were totally or partially destroyed or damaged.[46] 25,000 – 30,000 TCs, about a quarter of the TC population, were uprooted and internally displaced.[47] In other words, TCs suffered greater loss during this period.[48] The Security Council recommended the creation of the United Nations Peace Keeping Force (UNFICYP) to prevent recurrence of violence and to contribute to the restoration of law and order but further fighting could not be prevented.[49] The violence resulted in the withdrawal of TCs from government and their retreat into ethnically homogeneous enclaves.[50]

Tensions decreased in 1968, and negotiations, which would continue for more than 40 years, started.[51] Following the military coup of 15 July 1974 in Greece which spread to Cyprus to oust Makarios, and Turkey's military intervention of 20 July 1974, TC nationalists' proposal for partition became a practical reality. The establishment of the TRNC in 1983 enabled Turkish nationalism to become the official ideology of the state recognized by no other state except "motherland" Turkey.[52]

The intervention of Turkey in 1974 had profound effects on the GCs. At a national level, they lost their dream of a "Greek Cyprus" and their hold over every part of the territory and every aspect of Cypriot life. At a personal level, many were killed, suffered or were forced to move from their place of birth and leave behind homes, land and possessions.[53] In addition, there was the trauma of seeing part of their country "occupied" by an alien force – Turkey and the Turkish army.[54] The next section turns to TJ before addressing its relevance to Cyprus.

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[44] Rebecca Bryant, 'Life Stories: Turkish Cypriot Community' (Prio Cyprus Centre, Nicosia, 2012) 6; Gürel, Hatay and Yakinthou (n 10) 5-6

[45] Hoffmeister (n 13)15; the number of victims vary between 1000 (TCs)-200 (GCs) and 350 (TCs) – 200 (GCs)

[46] Report by the Secretary General on the United Nations Operation in Cyprus S/5959 (10 September 1964) para 160

[47] Hoffmesiter (n 13) 15

[48] Yiannis Papadakis, 'Greek Cypriot Narratives of History and Collective Identity: Nationalism as a Contested Process' (1998) 25 (2) American Ethnologist 149, 152

[49] Hoffmeister (n 13) 16

[50] Gürel, Hatay and Yakinthou (n 10) 7; see also Ahmet Sözen, 'A Model of Power-Sharing in Cyprus: From the 1959 London-Zurich Agreements to the Annan Plan' in Ahmet Sözen (ed) *Reflections on the Cyprus Problem: Compilation of Recent Academic Contributions* (Cyprus Policy Center 2004) 38

[51] Gürel, Hatay and Yakinthou (n 10) 8

[52] Hamit (n 31) 42

[53] See Yiannis Papadakis , 'Narrative, Memory and History Education' (n 3)

[54] See Chrysostomides (n 8) 141-198. For contradicting views see Necatigil (n 4) 79-124

II. Transitional Justice

A. The History of the Concept and its Definition

TJ has increasingly been subject of debate in the academic and policy mainstream in recent decades as a means of understanding and dealing with violent or authoritarian pasts through processes to prosecute wrongdoers, reveal truth, redress harm, facilitate reconciliation and prevent the recurrence of violence and violation of rights.[55] Teitel defines TJ as "the conception of justice associated with periods of political change, characterized by legal responses to confront the wrongdoings of repressive predecessor regimes".[56] She focused on dealing with past wrongs through purely legal means which leads to contentions that "transitional justice is at its root modelled on criminal justice systems",[57] or that it "mostly emphasizes corrective justice".[58] This reflects developments following the Allied-run Nuremberg Trials after World War II when the purpose of TJ was "accountability" of individuals for egregious violations of human rights.[59] Teitel states that, these processes reflected "the triumph of transitional justice within the scheme of international law" which created a legacy for holding states accountable for wrongdoing that has also become the basis of human rights law.[60] The focus was on individual accountability instead of states'.[61] This impacted the initial emphasis of TJ on individual criminal responsibility for international crimes and for civil and political rights.[62] According to Waldorf, "transitional justice is inherently short-term, legalistic and corrective. As such, it should focus on accountability for gross violations of civil and political rights."[63] On the other hand, Posner and Vermeule state that TJ is not different from ordinary justice which faces same difficulties on a larger level.[64] The Nuremberg model and the turn to human rights and international law played a crucial role in TJ

[55] Ruti Teitel, 'Transitional justice genealogy' (2003) 16 Harv Hum Rts J 69, 69-72; Rosemary Nagy, 'Transitional Justice as Global Project: Critical Reflections' (2008) 29 (2) Third World Quarterly 275, 275-278; Dustin N Sharp, 'Interrogating the Peripheries: The Preoccupations of Fourth Generation Transitional Justice' (2013) 26 Harv Hum Rts J 149, 149-150
[56] Teitel, 'TJ Genealogy' (n 55) 69
[57] Louise Arbour, 'Economic and Social Justice for Societies in Transition' (2007) 40 New York University Journal of International Law and Politics 1, 2
[58] Lars Waldorf, 'Anticipating the past: Transitional justice and socio-economic wrongs' (2012) 21(2) Social & Legal Studies 171, 180
[59] Teitel 'TJ Genealogy' (n 55) 70-73
[60] Ibid 70
[61] Ibid 73
[62] Arbour (n 57) 1-2
[63] Waldorf (n 58) 179
[64] Eric A Posner and Adrian Vermeule, 'Transitional Justice as Ordinary Justice' (2004) 117 (3) Harv L Rev 761

development and debates.[65] There is also debate about the influence of law on TJ and some scholars think that TJ could be too legalistic.[66] Collins maintains that a combination of some form of truth-telling along with compromise on the implementation of legal justice through the courts constituted a transitional "blueprint" in Latin America and other contexts.[67] The TJ paradigm recognizes that social, political and historical realities make ordinary justice mechanisms inadequate at the time of political change.[68] Even Teitel who is an exceptionalist noted that TJ is a pragmatic balancing of justice with political realism, both informed by and constitutive of its conditions.[69]

The adoption of the report by the UN in 2004 marked the inauguration of TJ as an international concern, which, at the same time, set out a wider framework of multiple goals and processes.[70] As the UN Secretary General noted in 2004, experience shows that the establishment of peace in immediate post-conflict periods, and its maintenance in the long term, can only be achieved by ensuring relevant populations are confident that "redress for grievances can be obtained through legitimate structures for peaceful settlement of disputes and fair administration of justice". In this regard, the restoration of the rule of law plays a crucial role.[71] In order to ensure accountability, serve justice and achieve reconciliation, the full range of processes and mechanisms associated with societies' attempts to come to terms with a legacy of large-scale past abuses came to fore. These could be both judicial and non-judicial mechanisms, with or without international involvement and individual prosecutions, reparations, truth-seeking, institutional reform, vetting and dismissals, or a combination thereof.[72] The definition in 2004 was intended to pave the way for future policies and actions of the UN, states and other organisations, and included a range of mechanisms many of which have forward-reaching implications.

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[65] Teitel, 'TJ Genealogy' (n 55) 76
[66] Dustin N Sharp, 'Emancipating Transitional Justice from the Bonds of the Paradigmatic Transition' (2015) 9 (1) IJTJ 150, 159-161; see Kieran McEvoy, 'Letting Go of Legalism: Developing a "Thicker" Version of Transitional Justice' in Kieran McEvoy and Lorna McGregor (eds) *Transitional Justice from Below: Grassroots Activism and the Struggle for Change* (Oxford, 2008); Nagy (n 55)
[67] Cath Collins, *Post-transitional justice: Human rights trials in Chile and El Salvador* (Pennsylvania State Press 2010) 7-9
[68] Lisa J Laplante, 'On the indivisibility of rights: truth commissions, reparations, and the right to development' (2007) 10 Yale Human Rights & Development Law Journal 141, 145
[69] Ruti Teitel, *Transitional Justice* (Oxford University Press 2000) 213-228
[70] Report of the UN Secretary General, 'The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies' S/2004/616 (23 August 2004)
[71] Ibid 3
[72] Ibid 4

The UN's adoption initiated further action in the field that can be seen in similar definitions of TJ as a "set of practices, mechanisms and concerns that arise following a period of conflict, civil strife or repression"[73] and "the array of processes designed to address past human rights violations following periods of political turmoil, state repression, or armed conflict".[74]

Defining the key concepts of justice and transition is also necessary at this point:

- According to the UN report of 2004, justice is an ideal of "accountability and fairness in the protection and vindication of rights and the prevention and punishment of wrongs. Justice implies regard for the rights of the accused, for the interests of victims and for the well being of society at large."[75] As Arbour argues this definition is problematic because the sentence, "fairness in the vindication of rights" may imply the need to guarantee economic, social, and cultural rights. However, she adds that the language of "the victim" and "the accused" in the second sentence appears to circumscribe the concept of justice with a more traditional dispute resolution approach focusing on violations of civil and political rights.[76] This was heeded by several practitioners and scholars, and reflected a broadening of TJ further from its focus which, "traditionally", was on "on serious human rights abuses... as well as violations of international humanitarian law and war crimes."[77]
- "Transition" refers to the process or a period of significant change from one set of circumstances to another, for example; from conflict to peace or dictatorship to democracy[78] or, to the "interim process that links the past and the future".[79]

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[73] Naomi Roht-Arriaza, 'The new landscape of transitional justice' in Naomi Roht-Arriaza and Javier Mariezcurrena (eds) *Transitional justice in the Twenty-First Century: Beyond Truth versus Justice.* (Cambridge University Press 2006) 2

[74] Tricia D Olsen, Leigh A Payne and Andrew G Reiter, *Transitional Justice in Balance: Comparing Processes, Weighing Efficacy* (United States Institute of Peace Press 2010) 11

[75] UN Secretary General 2004 (n 70) 4

[76] Ibid; Arbour (n 57) 4-5

[77] See Ruben Carranza, 'Plunder and Pain: Should Transitional Justice Engage with Corruption and Economic Crimes?' (2008) 2 IJTJ 310; 316; Waldorf (n 58) 172

[78] See the ICTJ's TJ definition <https://www.ictj.org/about/transitional-justice> accessed 29 May 2016

[79] See Wendy Lambourne, 'Transitional Justice and Peacebuilding after Mass Violence' (2009) 3 International Journal of Transitional Justice 28, 30; see also Fionnuala Ní Aoláin and Colm Campbell, 'The Paradox of Transition in Conflicted Democracies' (2005) 27 (1) Hum Rts Q 172, 173 where the authors state that "[T]ransition implies a journey."

There is also the question of what constitutes TJ; i.e. what are its components, indicators or processes? TJ as a field cohered particularly in the early 1990s around prosecutions, truth-telling, reparations, and institutional reforms.[80] De Greiff refers to these as the implementation of criminal justice (prosecutions), truth-telling, reparations and institutional reform. Institutional reform was later defined as guarantees of non-recurrence (GNR).[81] The GNR component was among reparations and, it now encompasses other measures which were previously labelled as institutional reform involving actions targeted at civil society and individual participation.[82]

Since the subject of this thesis is property rights and the IPC as an institution, the GNR/institutional reform component is particularly important. In addition, building sustainable peace requires changing and transforming the societal relations and structures which permitted armed conflict, repression and human rights violations.[83] International standards on GNR have grown significantly since 1993, demonstrated, inter alia, by the explicit reference to "guarantees of nonrepetition" in the International Convention for the Protection of All Persons from Enforced Disappearance.[84] Economic and social conditions have also increasingly found their way on to the agenda, paving the way for a more transformative approach to TJ.[85] Changing institutions will not however automatically reduce violence in transitional societies. Rather, it will contribute to societal transformation by creating more responsive and democratic state structures that are necessary to address violence and inequalities.[86] The measures must address social and economic issues in order for TJ

[80] Paige Arthur, 'How "Transitions" Reshaped Human Rights: A Conceptual History of Transitional Justice' (2009) 31 (2) Hum Rts Q 321, 325

[81] Paul De Greiff, 'Articulating the Links Between Transitional Justice and Development: Justice and Social Integration' in Paul de Greiff and Roger Duthie (eds) *Transitional Justice and Development: Making Connections* (New York: Social Science Research Council 2009) 33-41

[82] See 'Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence' A/69/518 (14 October 2014), 6; 'Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence' A/HRC/30/42 (7 September 2015)

[83] Lambourne, 'Transitional Justice and Peacebuilding after Mass Violence' (n 79) 34-35

[84] Report of the Special Rapporteur 2015 A/HRC/30/42 (n 81) 5

[85] Paul Gready, Jelke Boesten, Gordon Crawford and Polly Wilding, *Transformative Justice – A Concept Note* (2010) Unpublished manuscript, 5-6 <http://www.wun.ac.uk/files/transformative_justice_-_concept_note_web_version.pdf> accessed 14 January 2020; Paul Gready and Simon Robins, 'From Transitional to Transformative Justice: A new agenda for practice'. (2014) 8 (3) IJTJ 339, 345-348; Report of the Special Rapporteur 2015 A/HRC/30/42 (n 87)

[86] Paul Gready, *The Era of Transitional Justice: The Aftermath of the Truth and Reconciliation Commission in South Africa and Beyond.* (Routledge 2011) 7

to maintain credibility.[87] It is this expansion that puts transformative justice at the forefront as an approach that can contribute to TJ; a concept deemed of particular value for the purposes of this research.

Reparations are also of particular importance here since the IPC was established to be an effective remedy for violation of property rights for GCs. The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law call for "adequate, effective and prompt reparation for harm suffered" and access to equal and effective justice and information.[88] Reparations encompass various measures to repair the damage suffered by victims of human rights violations; i.e. restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. The UN Special Rapporteur Pablo De Greiff devotes his report in 2014 to reparations paying it a particular importance and emphasizing participation of victims in defining, designing, implementing and monitoring reparations processes.[89] Reparations satisfy victims' urgent basic needs, support their dignity and pave the way for the conditions under which they can participate in social and political life.[90] A deep participation of individuals, groups and communities and bottom-up initiatives can build constructive cooperation between interested stakeholders,[91] a comprehensiveness which could facilitate transformative potential of reparations.[92]

B. Limitations of Transitional Justice and Relevant Responses

Balasco notes that TJ is facing a "paradox of success" where the less effective its mechanisms become to reconstruct democracy and peace, the more we demand the expansion of their missions.[93] Furthermore, with its "incredibly fast trajectory", the

[87] Rama Mani, 'Dilemmas of expanding transitional justice, or forging the nexus between transitional justice and development'. (2008) 2 (3) IJTJ 253, 254
[88] 'UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law' A/RES/60/147 (21 March 2006)
[89] See Report of the Special Rapporteur 2014 (n 82) 20
[90] Waldorf (n 58) 177
[91] Paul Gready and Simon Robins, 'From Transitional to Transformative Justice: A New Agenda for Practice' (2014) 8 IJTJ 339, 345-347, 360-361
[92] Ibid 347
[93] Lauren M Balasco 'The Transitions of Transitional Justice: Mapping the Waves from Promise to Practice' (2013) 12 Journal of Human Rights 198, 198; see also Mani, 'Dilemmas of Expanding

"pressure to include broad agendas and issues" within its framework has also increased.[94] In this regard, according to Bell, TJ only became a "field" from the 2000s and covered a broader sphere than "transitions to democracy", marking transitions in a range of societies, especially ones attempting negotiated settlements in protracted social conflicts.[95] The Good Friday Peace Agreement and the transition associated with it in Northern Ireland can be regarded as an example of negotiated settlements in protracted disputes.[96] However, enduring grievances and resentments can continue to preserve intergroup divisions preventing reconciliation even after peace agreements have been signed.[97]

Despite expanded practices of TJ,[98] the performance and impact of these measures have been criticised, for example, for treating the symptoms rather than "the causes of conflict".[99] In this regard, when the issue is "justice", Lambourne states that it may be sought as a redress for crimes as well as a way of "building a new future".[100] While there is thus a relationship between justice, reconciliation and peacebuilding, TJ has not often been understood as a field to understand sustainable peacebuilding.[101] Lambourne examines how conflict participants view TJ in the context of peacebuilding after mass violence using her findings to develop a model of transformative justice which supports sustainable peacebuilding.[102] Whether a particular TJ mechanism has been adopted in line with the factors related to the needs

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Transitional Justice' (n 87); Patrick Vinck and Phuong Pham, 'Ownership and Participation in Transitional Justice Mechanisms: A Sustainable Human Development Perspective from Eastern DRC' (2008) 2 IJTJ 398

[94] Christine Bell, 'Transitional Justice, Interdisciplinarity and the State of the 'Field' or 'Non-Field'' (2009) 3 IJTJ 5, 13; Catherine Turner, 'Deconstructing Transitional Justice' (2013) 24 Law Critique 193, 196

[95] Bell (n 94) 7-8

[96] See Colm Campbell, Fionnuala Ni Aolain and Colin Harvey 'The frontiers of Legal Analysis: Reframing the Transition in Northern Ireland' (2003) 66 (3) Mod L Rev 317

[97] Nevin T Aiken, 'The Bloody Sunday Inquiry : Transitional Justice and Postconflict Reconciliation in Northern Ireland' (2015) 14 Journal of Human Rights 101, 103

[98] See also Bell (n 94) 8

[99] Lambourne, 'Transitional Justice and Peacebuilding after Mass Violence' (n 79) 34. Nagy, using "the categories of when, to whom and for what transitional justice applies", argues that "transitional justice is typically constructed to focus on specific sets of actors for specific sets of crimes". She further notes, "In the determination of who is accountable for what and when, transitional justice is a discourse and practice imbued with power"; see Nagy (n 55) 286

[100] Lambourne, 'Transitional Justice and Peacebuilding after Mass Violence' (n 79) 29; see also Arbour (n 57) 3

[101] See ibid

[102] See Lambourne 'Transitional Justice and Peacebuilding after Mass Violence' (n 79) for an examination of how conflict participants view transitional justice in the context of peacebuilding after mass violence.The author uses her findings to develop a model of transformative justice which supports sustainable peacebuilding. See also Patricia Lundy and Mark McGovern, 'Whose Justice?: Rethinking Transitional Justice from the Bottom-Up' (2008) 35 (2) Journal of Law and Society 265, 280

of those affected by the conflict is important for the credibility of processes[103] and to assess its effects and its reception by the population.[104] In this regard, the following sub-section examines transformative justice and its development.

C. Transformative Justice

As Mani states, a significant shortcoming of TJ is that it tends to be limited "to a preoccupation with the injustices related to the consequences of the conflict, to the neglect of the injustices implicit in the causes and symptoms of transitional justice".[105] The need for a new agenda which offers a concept of justice that is more "transformative" emerged which can be considered as a response to limitations of TJ.[106] A more transformative concept of justice provides an alternative that can be applicable anywhere and at any time to address structural and everyday violence,[107] which can further reform politics, locus and priorities of TJ and have an impact on the social, political and economic status of a wide range of stakeholders.[108] In other words, the emergence of transformative justice relies on the idea that existing models of TJ are not adequate for addressing structural violence and land inequalities or for ensuring the realization of socioeconomic rights, with transformative justice offered as a framework which may address these shortcomings. However, this is not the reason for including it as a framework in this thesis, but rather because transformation is considered as encompassing more wide-reaching change throughout society.[109]

Setting out the limitations of TJ, Gready and Robins state that, TJ is embedded in liberal peace, implying a project of liberal state building as an endpoint within the process. The authors also note that “liberal peace” has been widely criticised in "fragile transitional contexts" for prioritizing the setting up of institutions over a contextualized engagement with the population for their benefit, resulting in

[103] For example; it is stated that transition is limited to a western, liberal conception of justice. See Patricia Lundy and Mark McGovern (n 102)
[104] See Balasco (n 93) 202
[105] Rama Mani, ‘Balancing Peace with Justice in the Aftermath of Violent Conflict’ (2005) 48(3) Development 25, 30; see also Balasco (n 93) 203
[106] Gready and Robins (n 91) 339-40
[107] Ibid 340
[108] Ibid
[109] Daly (n 2) 74; Matthew Evans, ‘Structural Violence, Socioeconomic Rights, and Transformative Justice’(2016) 15 (1) Journal of Human Rights 1, 14-15

the creation of "empty" top-down institutions undermined by a lack of capacity and unable to respond to the needs of society.[110] Furthermore, TJ practice is said to be dominated by international networks rather than local movements; i.e. the agenda is externally driven and those most affected by violations have little or no opportunity to participate or to have an impact on the process.[111] Lambourne also emphasises the importance of consultation with the people affected while determining a specific path to take within a particular transitional justice context.[112] Thus, the definitions of TJ are broadened to include wider political and social processes integrating unofficial local initiatives including not only criminal prosecutions, truth telling, institutional reform and reparations but also commemorative practices, memory work, educational reform and reconciliation initiatives. However, this still does not necessarily provide a transformative approach; i.e. integrating social and economic policies for social justice and radical approaches impacting communities directly. In an effort to respond to criticisms, new perspectives provided a shift towards a more transformative approach, for example: policies and approaches having an impact on the social, political and economic status of a large range of stakeholders; GNR/institutional reform with reference to the needs of local people rather than a reform in line with external concerns and neoliberal economic agendas; reparations targeting the transformation of victims' circumstances to address inequalities; a new agenda focusing on how violence is perceived and tackled; and access and participation in design, implementation and evaluation of processes at all levels.[113]

But how does transformation differ from transition? Transition can be defined as a concept referring to change from one state of being to another. On the other hand, transformation is a deeper and more uncertain process, which involves cultural and behavioural change. The distinction between the two is important as "transition" does not necessarily reach "deep into the soil of the new society where the

[110] Gready and Robins (n 91) 341; see also Eric A Posner and Adrian Vermeule, 'Transitional Justice as Ordinary Justice' (2004) 117 (3) Harv L Rev 761, 766; it should also be noted that the tools of transitional justice often contradict with other policy goals.

[111] Gready and Robins (n 91) 342-343; see also Lundy and McGovern, (n 102) 283 where the authors address the need for a participatory approach to achieve long-term sustainability, while touching upon the potential abuses in this regard.

[112] Lambourne, 'Transitional Justice and Peacebuilding After Mass Violence' (n 79) 28-30; Lambourne also indicates the Special Court and the Truth and Reconciliation Commission in Sierra Leone as examples, where they were established in cooperation with the UN and Sierra Leonean government. See also Wendy Lambourne, 'What are the Pillars of Transitional Justice? The United Nations, Civil Society and the Justice Cascade in Burundi' (2014) 13 Macquarie Law Journal 41, 58

[113] Gready and Robins (n 91) 340-350; Lambourne, 'Transitional Justice and Peacebuilding After Mass Violence' (n 79) 28-30; Arbour (n 57) 25

commitment to democratic values actually takes root".[114] Lambourne encourages the use of the term transformative justice indicating that it "implies long-term, sustainable processes" instead of an "interim process that links the past and the future" to account for the contexts that may impact on participants' needs and expectations of justice.[115] Proposing to reframe TJ as "transformative justice", she states that it not only deals with the past but also establishes conditions to provide for justice with a longer term vision than the term TJ offers.[116]

McAuliffe also labels transition as "a finite and contained phenomenon, with temporal limits at the undemocratic and democratic ends of the interregnum between regimes".[117] Daly characterizes transformation as encompassing fundamental changes in a society's culture, structures and patterns of relations. If the values of the new regime are to take root, the culture in which they operate should be transformed.[118] She also notes that transformation is necessary to ensure non-recurrence of violations.[119] In other words, "tolerance" to human rights violations that once existed should be replaced by "resistance" to those violations. While simply changing the government may not provide for this, the new government's response to past abuses matters for transformation.[120]

According to Gready and Robins, transformative justice is "transformative change that emphasizes local agency and resources, the prioritization of process rather than preconceived outcomes and the challenging of unequal and intersecting power relationships and structures of exclusion at both the local and the global level".[121]

There is debate as to whether transformative justice is a new field or not. Normative discussions about whether transformative justice is a set of ideals to integrate in the established TJ mechanisms (a subfield of TJ) or a new phenomenon

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[114] Daly (n 2) 74

[115] Lambourne, 'Transitional Justice and Peacebuilding After Mass Violence' (n 79) 30; see also Lauren Marie Balasco, 'Locating Transformative Justice: Prism or Schism in Transitional Justice? Review Essay' (2018) 12 IJTJ 368, 371

[116] Lambourne, 'Transitional Justice and Peacebuilding After Mass Violence' (n 79) 45

[117] Pádraig McAuliffe, 'Transitional Justice's Expanding Empire: Reasserting the Value of the Paradigmatic Transition' (2011) 2 (2) Journal of Conflictology 32, 35

[118] Daly (n 2) 73

[119] Ibid 181

[120] Ibid 74; see also George Devenish, 'Constitutional and Political Developments' (1995) 6 SAHumRtsYB19, 42 (The author emphasises the importance of underpinning a human rights culture in South Africa)

[121] Gready and Robins (n 91) 43; see also Gready et al (n 85) 1 (The authors propose that transformative justice offers a concept of justice that "seeks to change pre-conflict structures in ways that are more inclusive, less unequal and more fair.")

originating in transitional societies (a field on its own) requires the identification of a set of transformation indicators.[122] Evans argues that transformative justice is not part of TJ, and that existing mechanisms can have very little impact on the structural social and economic issues which are currently underestimated in TJ.[123] Other scholars raise the question of whether transformative justice represents a prism through which to re-evaluate TJ or a schism in the field.[124] Since this debate falls outside this research, there is no need to consider the issue further. It suffices to state that transformative justice is considered as a framework with expanded components of institutional reform/GNR, encompassing wider social and political policies to develop existing mechanisms to have deeper social impacts which could pave the way for altering a culture of mistrust and encouraging resistance to violations of rights.

Two other concepts to consider here are “retributive justice” and “restorative justice”. The former involves punishment of the wrongdoer and is usually associated with trials.[125] Teitel states that, "trials offer a way to express both public condemnation of past violence and the legitimation of rule of law necessary to the consolidation of future democracy" and that "criminal proceedings are well suited to affirm the core liberal message of the primacy of individual rights and responsibilities".[126] According to Cassese, where they also fulfil the goal of reconciliation, retributive mechanisms provide a record so that future generations can remember what happened.[127] For societies in transition facing a variety of complex problems, injustices do not always lend themselves to correction by retributive justice or punishment. Furthermore, the need for justice is necessary for society as a whole, and not just for individuals who are typically the focus of retributive justice.[128] These problems as Daly states, have many different faces. Examples include deep divisions arising from varying socio-economic situations, lack of information regarding the previous regime, lack of housing, health, education or provision for other needs, racial or religious divisions within society, and economic

[122] See Balasco, ‘Locating Transformative Justice: Prism or Schism’ (n 115) 372
[123] Evans (n 109) 6-8
[124] Balasco, ‘Locating Transformative Justice: Prism or Schism’ (n 115)
[125] Lambourne, ‘Transitional Justice and Peacebuilding after Mass Violence’ (n 79) 30 footnote 6
[126] Ruti Teitel, *Transitional Justice* (Oxford University Press 2000) 30
[127] See Jose E Alvarez, 'Crimes of State/Crimes of Hate' (1999) 24 Yale J Int’l L 365, 374
[128] Daly (n 2) 79

instability.[129] Depending on the nature and form of injustice, the mechanisms for redress also vary.[130] For example, if the central feature of society is "the social cleft", the main aim of the transition must be reconciliation whereas if it is "sheer turbulence", then the focus should be on stability.[131] Whether criminal trials achieve desired outcomes in transitional settings is also debatable.[132] It should be noted that, societies facing transition often start by drafting constitutions, improving economies, and adopting policies to strengthen the rule of law and democracy.[133] In this vein, public participation, as stated above, is important as a dominant culture is likely to have harboured injustice. Therefore, countries in transition also need to change the culture that permeates society as well as changing governments.[134] In other words, this brings us again to TTJ: justice must have a transformative aspect in order to prevent backsliding by rulers and societies themselves.[135] For example, in the case of South Africa, Lange states that transformation was considered as a holistic project aiming to change the "attitudes, consciousness and material conditions" of people to reflect the values featured in the constitution for which the struggle was conducted.[136]

By contrast, restorative justice is justice that restores communities or relationships and it is deemed an alternative to the formal court system.[137] In other words, restorative justice is centred on the idea that justice must involve efforts to "restore" a lost balance and to aim for reconciliation and that prosecutions may not be the only means to achieve this.[138] Lambourne proposes a combined approach to restorative and retributive justice in order to avoid compromises while also

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[129] ibid; Laurel E Fletcher and Harvey M Weinstein, 'Violence and Social Repair: Rethinking the Contribution of Justice to Reconciliation' (2002) 24 (3) Hum Rts Q 573, 576-577

[130] Daly (n 2) 80; As Pham and Vinck stated different mechanisms have been implemented to date in South Africa, the Former Yugoslavia, East Timor, Iraq and Rwanda among others (Phuong Pham and Patrick Vinck, 'Empirical Research and the Development and Assessment of Transitional Justice Mechanisms' (2007) 1 IJTJ 231, 231-232

[131] Daly (n 2) 80

[132] Ibid 110

[133] Ibid 81

[134] Ibid 82

[135] Ibid; Christopher J Roederer, ''Living Well is the Best Revenge' - If One Can: An Invitation to the Creation of Justice off the Beaten Path' (1999) 15 SAJHR 75, 79

[136] Johnny Lange, 'The Historical Context, Legal Origins and Philosophical Foundations of the South African Truth and Reconciliation Commission', in Charles Villa-Vicencio and Wilhelm Verwoerd (eds), *Looking Back, Reaching Forward, Reflections on the Truth and Reconciliation Commission of South Africa* (UCT Press 2000) 16. The author also notes that reconciliation, reconstruction and development were identified as the basis of transformation, 17

[137] Lambourne, 'Transitional Justice and Peacebuilding after Mass Violence' (n 79) 30

[138] Bronwyn Anne Leebaw 'The Irreconcilable Goals of Transitional Justice' (2008) 30 Hum Rts Q 95, 104; Jeffrey Blustein, 'Forgiveness, Commemoration, and Restorative Justice: The Role of Moral Emotions' (2010) 42 (4) Metaphilosophy 582, 613

acknowledging that the processes are unavoidably complicated and inadequate to deal with enormous psychological and physical pain and the destruction of war/mass violence.[139]

TTJ builds on reparative and restorative justices that place the community at the heart of relevant processes. Mani characterises reparative, restorative and transformative justice as parallel concepts, which could facilitate reconciliation.[140] Daly maintains that "transformative justice" has two goals -reconciliation and deterrence. She regards reconciliation as people learning to live together, and continuing to do so in the future.[141] Daly notes that it is crucial to understand the meaning of reconciliation in order to identify the goals of transition and to identify whether they are being realised or not.[142] In other words, even if the transitional period is over in any given country, reconciliation might not yet have been achieved. It is said that the process of reconciliation requires both sides of any given conflict to leave their own comfort zones and to consider themselves and their actions from the other side's perspective.[143] It can be argued that once achieved, reconciliation provides for transformation as a condition of social peace and stability.[144] But, the issue is connected with restorative justice since reconciliation is concerned with the restoration of damaged relationships and with building trust within society.[145] On the other hand, Restorative justice scholas themselves call for a more transformative approach emphasizing behaviours, relations, structures and systemic injustices.[146]

Institutions which contain this express mandate include, for example, the Truth and Reconciliation Commission in South Africa whose role according to Mamdami is, in fact, to set the terms for a social debate.[147] It can be noted that, the institutions can be seen as public spaces in which the groundwork for reconciliation is laid.[148] People who agreed with the historic narrative constructed by the South

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[139] Lambourne, 'Transitional Justice and Peacebuilding acfter Mass Violence' (n 79) 30
[140] Rama Mani, 'Rebuilding An Inclusive Political ommunity After War' (2005) 36 (4) *Security Dialogue* 511, 521-25
[141] Daly (n 2) 84-85
[142] Ibid 85
[143] Ibid 86
[144] Ibid 88; see also Coleen Murphy, *A Moral Theory of Political Reconciliation* (Cambridge University Press 2010) Ch 4 where the author sets out the elements of a process for political reconciliation; i.e. elements for the political relationships to be rebuilt)
[145] Daly (n 2) 88
[146] Simon Robins, *Families of the missing: A Test for Contemporary Approaches to Transitional Justice (*New York / London: Routledge Glasshouse 2013) 11
[147] Daly (n 2) 91. Daly refers to this author.
[148] Ibid

African Truth and Reconciliation Commission showed a more favourable attitude towards reconciliation, confirming that social cohesion is strengthened by a common collective memory of the past integrating different views.[149]

Civil society and governments provide important sites for reconciliation. In other words, the actual work cannot be done by transitional institutions themselves which can merely start the process.[150] But the extent to which they lay the groundwork for reconciliation matters with respect to how the success of the institution can be measured.[151] In other words, whether the institution provides the tools to promote new values, and whether these values are both desired and feasible in society should be taken into consideration when measuring success. It should be added that, in some cases the test should not only be "how the institution functions" but also "how the society functions once the work of the institution is over".[152] For example; *gacaca* courts in Rwanda served as a first step towards reconciliation, but they could not provide trust between many perpetrators and survivors.[153] Furthermore, the promises of reparation and compensation were not fulfilled either in Rwanda or in South Africa.[154] However, a longitudinal study showed that Rwanda's *gacaca* courts had positive intergroup effects.[155] Daly observes that it is a symbol of unstable societies to have successive transitions, because the cause of instability – a cultural tolerance of oppression[156]- has not been rooted out. Kosovo, where the same conflicts arose many times, is an example showing repeated cycles of violence and thus the importance of transformative justice as a means of reconciliation and deterrence.[157] Since reconciliation and deterrence can be achieved by various mechanisms and/or institutions, some aspects of particular relevance to this study should also be pointed out here. The officers of the institutions, their budget, their

[149] Manuel Cardenas et al 'How Transitional Justice Processes and Official Apologies Influence Reconciliation: The Case of the Chilean 'Truth and Reconciliation' and 'Political Imprisonment and Torture' Commissions' 26 (2015) Journal of Community & Applied Social Psychology 515, 517
[150] Daly (n 2) 91 (The author refers to Desmond Tutu's statement in his forward to the Truth and Reconciliation Commission Report)
[151] Ibid
[152] Ibid 92
[153] Human Rights Watch, 'Justice Compromised: The Legacy of Rwanda's Community-Based Gacaca Courts' (31 May 2011); see also Barbara A Misztal, 'Political Forgiveness' Transformative Potentials' (2016) 29 Int J Polit Cult Soc 1, 12
[154] Misztal (n 153) 12. See also Aletta J Norval, 'No Reconciliation Without Redress: Articulating Political Demands in Post-transitional South Africa' (2009) 6 (4) Critical Discourse Studies 311, 316
[155] Cardenas et al (n 149) 517
[156] It should be stated that successive transitions are not necessarily a reflection of cultural tolerance to oppression. Types of transitions may vary.
[157] Daly (n 2) 94-95; see Teitel, *Transitional Justice* (n 126) Chapter 3

independence, the way they are created, their terms and their structural features are all important.[158] It can be noted that transformative justice is essential to ensure that injustices shall not be repeated. If the culture of injustice stands as it is, then there is no guarantee that violence and/or injustices will not recur.[159]Although, the context has an impact on the choice of mechanism to be established, some ingredients could be identified.

An institution the establishment of which is under consideration is also an early reflection of the values of the new government and, if trust is to be promoted, it should be structured accordingly.[160] For example, its transparency and its officers' integrity are important matters.[161] Or, for example, if the primary goal is to provide for participation, it should include a variety of voices, both in terms of the society and the officers of the institution.[162] Thus, it is essential to guarantee that the structural features of an institution reflect the values of the new regime, the new government and society as a whole.[163] It should be added that to deem the relevant mechanism successful these values should be digested not only in theory, but also in practice. In this vein, the institution's authority and/or its mandate are crucial. In addition, it should of course have sufficient resources and/or budget to do its work appropriately and effectively.[164] It is a fact, even for ordinary times, that a mechanism insufficiently empowered cannot work effectively. In transitional times, an insufficient mechanism, i.e. one favouring the status quo, would even be more prejudiced for the purposes of transformative justice since it would harm the entire process. In transitional societies if the state's legitimacy is too weak, the legitimacy of the institution will be affected accordingly with potentially widespread negative effects.[165]

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[158] Daly (n 2) 95
[159] Ibid 94
[160] Ibid 96-97
[161] Ibid 97
[162] Ibid. See also Lundy and McGovern (n 102) where the authors also argue that a participatory approach should be followed. They use the concept "grassroots approach". See also Fletcher and Weinstein (n 129) 612 where the authors state that "Rebuilding a society requires communities to acknowledge the full range of acts in which their members participated for reconciliation to be a realizable possibility." For participatory approach Gready also states that "In truth, this hypothesis—do everything, engage everyone—is also one for which there is little existing empirical evidence at present." (Paul Gready, 'Analysis: Reconceptualising Transitional Justice: Embedded and Distanced Justice' (2005) 5 (1) Conflict, Security & Development 3, 7)
[163] Daly (n 2) 97
[164] Ibid
[165] Ibid

In addition, an institution which does not respond to those whose rights have been violated cannot transform society because there will be no chance of distinguishing the new regime from the old and of paving the way for transforming society and social relationships.[166] But, if we focus entirely on victims' interests and transformation, non-victims will be excluded from the process, and thus, the chance of reconciliation will be diminished.[167] For example in Rwanda, a perception of victor's justice caused displeasure among the Hutu majority, while the government was seen as being controlled by the Tutsi minority.[168] If excluding a part of the population is repeated, the political justice necessary for successful implementation of measures is unlikely to be achieved.[169] In this case, it would not be wrong to state that neither reconciliation nor transformation could be maintained effectively. The inclusion of the population as a whole is also connected with the fact that the transformative power of a mechanism derives from its social connections. Understanding a particular society is essential in order to be able to transform it,[170] while the institutional response within transformation is also important. It is a fact that institutions of ordinary times are shaped by past practices and existing cultures. By contrast, transitional institutions should not be constrained by past practices as it is the past practice which is often challenged in transitional times.[171] In this regard, transitional governments are often restrained as a result of heavy reliance upon international recognition and aid. Transitional governments therefore usually shape their institutions in line with international norms. But, as mentioned previously, they should remain aware of their own needs and transform their own cultural habits of tolerating human rights violations.[172] Implementation depends on circumstances on the ground such as political will, the capacity of the relevant state and the resources available to translate initiatives into policy which might prevent mechanisms delivering transformation.

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[166] Ibid 98
[167] Ibid
[168] Lambourne, 'Transitional Justice and Peacebuilding after Mass Violence' (n 79) 44
[169] ibid 45
[170] Daly (n 2) 99, the author refers to South Africa Truth and Reconciliation Commission and *gacaca* courts as examples and states that their transformative power derives from their connection to the society.
[171] ibid 111
[172] ibid

D. Types of Transition

Some TJ practices are initiated before regime change, or during an ongoing internal armed conflict.[173] Among the examples of processes of TJ[174] which took place while the conflict was/is ongoing are the Ugandan Amnesty Act 2000, the International Criminal Court (ICC) investigations in Northern Uganda in 2003, the Democratic Republic of Congo (DRC) Truth and Reconciliation Commission 2002, the ICC investigation of DRC in 2004 and the ICC arrest warrant for Bashir in Sudan in 2007.[175] When this is the case, trade-offs between justice and peace are inevitable since the players are forced to struggle with the complexities of bringing to justice the leaders with whom peace settlements or regime change are being actually negotiated causing delays with regard to the actual peace and/or end of violence.[176]

Posner and Vermeule also distinguish "transitions led by the elite of the old regime", "transitions forced on the elite by the opposition", "transitions that are bargains between the elite and the opposition" and "transitions that are imposed by a foreign nation".[177] Spain is an example of an "elite-led" model of transition centred on King Juan Carlos' democratic reforms after the death of Francisco Franco.[178] By contrast, the coalition of civil and military groups which defeated the Greek Colonels in 1970 and established a constitutional democracy is an example of an "opposition-led" model of transition.[179] An example of a "bargain-led" model is the Polish transition resulting from the threat of economic collapse where the reformers in the Communist Party were strengthened leading to negotiations for a quasi-democracy.[180] Finally, Japan and Germany provide examples of the "power-led" model where the Allied powers ended the old regimes and installed liberal democracies following World War II.[181] It is said that the type of transition has an impact on the kind of transitional justice that will take place. For example,

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[173] Teitel, *Transitional Justice* (n 126) 6

[174] Posner and Vermeule (n 64) distinguish "regime transitions" and "intrasystem transitions". They also put forh the distinction between large scale and small scale intrasystem transitions. For example; a constitutional amendment is a large scale but an amendment in the tax code is a small scale one, 763-764

[175] See Balasco (n 93) note 4

[176] Ibid 203

[177] Posner and Vermeule, (n 64) 769; the authors also refer to Samuel P Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (University of Oklahoma Press 1991) 113-14

[178] Chile (1989), Hungary (1989) Russia (1991) and Bulgaria (1992) are all examples to elite led model transition. See Posner and Vermeule (n 116) 769

[179] Portugal (1976) and Argentina (1983) are examples of this model. See ibid

[180] Brazil (1985), Czechoslovakia (1989) are examples to this. See ibid

[181] Ibid

"transitional justice increases" where the involvement and impact of elites "decreases",[182] often the result of elites negotiating with the opposition in an attempt to protect themselves from post-transitional punishments.[183]

New/transitional governments may also struggle to confront the legacy of past abuses and to consolidate the rule of law such as in Argentina in the 1980s, Chile and South Africa in the 1990s, Peru in the 2000s and Tunisia in 2011.[184] Other situations such as Kenya and Cote D'Ivoire fit less easily into clear categories where extensive post-electoral violence cost many lives and displaced huge parts of the populations in both cases.[185] Again, sometimes, the issues of scale and fragility are clear but the opportunity is more limited in places such as Afghanistan and Iraq where conflicts continue.[186]

Although change might not be realised in a defined period of time where, in practice, transition may cover decades,[187] there have also been cases where transitional processes have followed the conclusion of a peace agreement between conflicting parties. In other words, transitional justice opportunities have arisen most of the time in and around peace processes seeking to end internal armed conflicts where parties to negotiations and others, such as civil society and victims' groups may seek to incorporate justice issues as part of agreements to end the conflict. Examples include Colombia, Guatemala, El Salvador, Sierra Leone, Democratic Republic of Congo, Liberia, South Sudan, the Philippines, Nepal, amongst others.[188] For example; Guatemala's history is marked by great structural injustice, the marginalization of indigenous people, and a 36-year internal armed conflict between government and insurgents. UN-brokered peace accords, finalized in 1996, ended the war and brought promise of truth, reparations, and reforms to address deep-rooted

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[182] Ibid 770. For example; where there is an elite led model, transitional justice is limited. Where the elite and the opposition enter a bargain, transitional justice is moderate.
[183] Ibid 770, 772. The authors also provided tables on the issue where this correlation can give an indication.
[184] See <https://www.ictj.org/our-work/regions-and-countries> accessed 7 March 2019
[185] See <https://www.ictj.org/about/transitional-justice> accessed 7 March 2019
[186] See ibid
[187] See Naomi Roht-Arriaza 'Transitional Justice and Peace Agreements the International Council on Human Rights Policy Review Meeting Peace Agreements: The Role of Human Rights Negotiations' (Belfast, 7-8 March 2005) para 1
[188] See <https://www.ictj.org/about/transitional-justice> accessed 7 March 2109; see also ibid para 12; Ruben Carranza, 'Relief, Reparations and the Root Causes of Conflict in Nepal' (ICTJ 2012) 1; Priscilla Hayner, 'Negotiating peace in Liberia: Preserving the possibility for Justice' (ICTJ – Centre for Humanitarian Dialogue 2007)

problems.[189] More than forty years of the apartheid in South Africa produced a long history of human rights violations, including massacres, torture, lengthy imprisonment of activists, and crippling racial discrimination. Nelson Mandela's release in 1990 led to negotiations and elections in 1994 with the South African Parliament mandating the establishment of the Truth and Reconciliation Commission in 1995.[190] Sierra Leone continues to try to address the legacies of a 10-year conflict marked by violence against civilians, recruitment of child soldiers, corruption and struggle for control of diamond mines, the death of tens of thousands, rapes, mutilations and tortures. In July 1999, the Government of Sierra Leone and the Revolutionary United Front rebel group signed the Lomé Peace Agreement agreeing to establish a Truth and Reconciliation Commission which began working in late 2002.[191] A peace agreement put an end to 50 years of internal conflict with the country's biggest guerrilla group, the Fuerzas Armadas Revoulcionarias de Colombia-Ejército del Pueblo (FARC-EP) in Colombia. The peace negotiations positioned the rights of the conflict's victims to accountability, truth and reparation at the fore of the political life of the country.[192]

Measures taken during peace processes depend on the context of each case. Essentially, what is appropriate, possible or feasible in a given set of circumstances may not be possible in others. Generally, TJ processes take place following the cessation of aggression, the striking of a peace deal or the end of a period of repressive rule. More specifically, truth commissions and other TJ measures (prosecutions, civil lawsuits, amnesty, lustration or cleansing of security forces, reparations programs and state-sponsored commemoration or memorialisation provisions), have been incorporated into peace accords in places such as El Salvador, Guatemela, Sierra Leone, Democratic Republic of Congo, Burundi, Nepal and Liberia.[193]

TJ mechanisms and/or tools are not expected to bring peace but are means to consolidate an existing peace and to prevent the recurrence of violence.[194] For

[189] See <https://www.ictj.org/our-work/regions-and-countries/guatemala> accessed 7 March 2019
[190] See <https://www.ictj.org/our-work/regions-and-countries/south-africa> accessed 7 March 2019
[191] See <https://www.ictj.org/our-work/regions-and-countries/sierra-leone> acccessed 7 March 2019
[192] See <https://www.ictj.org/our-work/regions-and-countries/colombia> accessed 7 March 2019
[193] Roht-Arriaza (n 187) para 12; see Hayner, 'Negotiating Peace in Liberia' (n 188); see Carranza, 'Relief, Reparations and the Root Causes of Conflict in Nepal' (n 188) 1;
[194] See Lambourne 'Transitional Justice and Peacebuilding after Mass Violence' (n 79) 34; for example "never again" was the title of the report of the truth commission in Argentina which is a promise to show the intention to prevent recurrence of violence, see Schaap Andrew, 'The Time of

example, although there is no rule to conclude that reconciliation may only be achieved during times of peace, since a level of consensus between the parties is needed, far reaching measures are best pursued following a peace settlement. While it is difficult to transform relationships and to reconcile in the absence of a stable environment,[195] this should not mean that some kind of confidence building measures cannot be undertaken. On the other hand, TJ mechanisms, introduced as a result of peace agreements, can be considered idealised sequencing arrangements.[196]

It is difficult to situate the case of Cyprus in any of the types of transition considered above. On the other hand, the fact that it is unknown what Cyprus is transitioning to does not undermine TJ as a relevant framework here. In fact, the situation with significant transitions already having occurred and the current position far from permanenetly settled, make TJ an important framework for Cyprus as explained in Chapter 1. The IPC as an institution for transition of property rights could be considered as an "imposed" mechanism as a result of the decisions of the ECtHR in the absence of a peace settlement agreement. The process for a solution of the Cyprus problem has been ongoing for more than 40 years and will be considered further in Chapter 3. Property rights of the displaced Cypriots are an important component of the negotiations and it is likely that more balanced and efficient remedies than those afforded by the IPC Law would be afforded to right holders of an agreement were reached.[197] Therefore, despite the fact that the IPC provides remedies to GCs within the limited framework provided by its Law, it is not possible to achieve more than it currently affords. The property problem for GC properties could therefore be considered constrained by the current mandate of the IPC. The same applies for TC properties which are within the mandate of the Custodian as explained in Chapter 1 and considered by the decision of the ECtHR in *Niazi Kazali and others.*

Reconciliation and the Space of Politics', in Scott Veitch (ed) *Law and the Politics of Reconciliation* (Aldershot: Ashgate 2007) 19

[195] See Lambourne (n 79) 34-5

[196] See Nagy (n 55) 280 (Nagy stresses that TJ has typically appeared salient when massive violence has been brought to a halt)

[197] Annan Plan property scheme will be outlined in Chapter 3 to show how the issue was addressed.

E. The Relevance of Transitional Justice to Cyprus

As outlined in the beginning of this Chapter, the historical background of the island of Cyprus is marked with the interethnic struggle between Cypriot communities. It can be said that the underlying historical, economic, social and cultural reasons for the antagonism that exists between the two communities, in turn has made achieving a political solution difficult, if not impossible. As a result of 300 years of Ottoman rule of Cyprus, 100 years of gradual Greek emancipation, from which Cyprus was excluded because it was handed over to the UK, Cyprus can be seen as a piece of unfinished business between Greeks and Turks dating at least from the 1920s.

In addition, there have been factors which are specifically Cyprus-related that reinforced GCs' sense of their Greek identity and their entitlement to govern Cyprus alone, namely, the GC campaign for *enosis*, which by the 1950s had a political leader Makarios, the 1960 Constitution which, in the GCs' eyes, was too generous to the TCs, who accounted for 18% of the population, growing GC economic power – dominating all sectors of the island's finance, trade and all important tourist sectors – TCs were increasingly marginalised economically as well as politically. It is also important to point out the TC response to the prospect of increasing GC dominance during the final stages of British rule. A substantial number of TCs responded in kind to violence from the GCs. On top of all that, both Greece and Turkey intervened, often secretly and almost always for their own interests, in support of their communities in Cyprus. Finally, the allegedly divisive role of Great Britain have played a significant role in the development of Greek and Turkish nationalism in Cyprus.[198] All this is the backdrop to the international negotiations about Cyprus which started in 1968 outlined here to understand the background to the difficulties facing those trying to negotiate a settlement.

According to Bryant, "the partition of the island and displacement of almost half its population led to the memory of the "other side" becoming institutionalized as a political strategy"[199] with GC resentment centred on TC enjoyment of GC property, and TC resentment centred on the view that GCs silenced TCs before

[198] Chrystalla Yakinthou, *Political Settlements in Divided Societies* (n 21) 37, 41

[199] Rebecca Bryant, 'Partitions of Memory: Wounds and Witnessing in Cyprus' (2012) 54(2) Comp Stud Soc'y&Hist 332, 342

1974.[200] Furthermore, the period between 1963 and 1974 is referred to and remembered by many TCs as a siege, while it is surrounded by silence and referred to as "the troubles" by GCs,[201] with the summer of 1974 remembered by GCs as a period of destruction and invasion.[202] Referring to the people who were killed, threatened or suffered during the period between 15 July Greek coup and 20 July 1974 Turkish intervention, the TC narrative tends to see the 1974 intervention as a victory and a sacrifice required for their community's liberation and salvation.[203]

The Cyprus conflict is in other words frozen as if "someone has pressed the "pause" button".[204] The commitment of the rest of the world as well as the Cypriots themselves to improve the situation is frozen as well. In Cyprus there have been voices from time to time calling for "coming to terms with the past," or "healing the wounds of the past." However, they tend to be drowned out by others uttering "the time is not right," or "we should first deal with the Problem."[205]

In this sense, it would not be wrong to assert that achieving peace is a matter not only of politically negotiating a "solution" but also of radically reorienting the present.[206]

Bryant, in her paper about "de facto states on the threshold of the global", asserts that de facto states suffer from economic and political isolation and turn into "de facto enclaves". She continues by stating that "the metaphor of waiting on a doorstep" leads us to long-term "liminality" as their feature.[207] In anthropology, to be at the *limen* means "to be caught between one state of being and another".[208] The "liminal", "a threshold", a point between the past and future is a liminal present.[209] In other words, de facto states are stuck between "the political form they once were" and "the recognized body politic they wish to become" which prevents them from crossing the said threshold that would allow them to exist as "real" sovereign states. Although, Bryant refers to de facto states in general, and to the case of the TRNC in

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[200] Chrystalla Yakinthou, 'Transitional Justice in Cyprus, Challenges and Opportunities' edited by Ahmet Sözen & Jared L. Ordway (Security Dialogue Project, Background Paper. Berlin: Berghof Foundation & SeeD 2017) 9
[201] Ibid 8-9
[202] Ibid
[203] Ibid 9
[204] Bryant, 'Partitions of Memory' (n 199) 338
[205] Ibid 357
[206] Ibid 357 - 358
[207] Rebecca Bryant, 'Living with Liminality: De Facto States of the Threshold of the Global', (2014) 20 (2) Brown Journal of World Affairs 125, 126
[208] Ibid 126
[209] Bryant, 'Partitions of Memory' (n 199) 357-358

particular, "the metaphor of waiting on a doorstep" leads us to a feature of Cyprus. The threshold is the point between a partitioned and a united island.

As pointed out in Chapter 1, Bozkurt and Yakinthou note that while some NGOs and civil society actors, as well as journalists, film-makers, activists, and academics have explored the legacy of conflict, there has been very little public discussion about how the past has been dealt with at the political level and by the media in Cyprus. Furthermore, many attempts to come to terms with the past have been met with the refrain not to "rock the boat". Policy makers are especially concerned that truth-seeking efforts have significant potential to destabilise the peace process by stirring up old animosities (both between and within communities) about who killed whom and why.[210] This reluctance, along with the reluctance on the part of dominant media communities to deviate from hegemonic victim/aggressor narratives, have significantly contributed to the lack of public debate on the past.[211] However, Yakinthou and Bozkurt add that the lack of public debate does not necessarily amount to disinterest in coming to terms with the past, and opinion polls reveal that there is strong support for truth-seeking and reconciliation processes in Cyprus.[212]

Yakinthou refers to the four principal TJ processes distinguished above as "the right to truth", "the right to justice", "the right to reparation" and "the guarantee of non-recurrence"[213] and considers them relevant to Cyprus.[214] She makes recommendations in this respect and notes that the necessary tools to realise these should be included in a peace agreement focusing on "dealing with the past" or "transitional justice" establishing commitment to them as "the four key principles of transitional justice".[215] The only mechanism established to date has been the Committee on Missing Persons (CMP) examined more fully below. Following this, the challenges presented by the property rights of the displaced and its legal framework will be addressed.

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[210] Umut Bozkurt and Chrystalla Yakinthou, 'Legacies of Violence and Overcoming Conflict in Cyprus, The Transitional Justice Landscape' (2/12 Prio Cyprus Center) 6-7
[211] Ibid
[212] Ibid
[213] Chrystalla Yakinthou, Carolyn Buff, and Lisa Clifford 'Advancing Transtional Justice in Conflict-Affected Contexts: A Case Study for Libya' (IREX) 3
[214] Yakinthou, 'Transitional Justice in Cyprus (n 200) 25
[215] Ibid 25. This is also evident from the author's view stating that "This discussion paper seeks to provide a guiding set of questions that will help formulate a more coherent transitional justice policy in the event that a peace plan is agreed upon and accepted at referendum.", 4

1. The Committee on Missing Persons (CMP)

1,510 GCs and 492 TCs went missing in Cyprus.[216] The bi-communal CMP was established in 1981 under the aegis of the UN but remained inoperative for more than 25 years. However, by the late 2000s, it had become a successful bi-communal project.[217] The CMP has exhumed 1224 victims and identified 868 persons so far, enabling thousands of families from both communities to bury their loved ones after decades of distress and uncertainty.[218] Carried out predominantly by GC and TC experts (forensic archaeologists, geneticists, etc.), the UN Secretary General has described it as "a model of successful cooperation between the GC and the TC communities".[219] Kovras asks, why were families of the missing trapped in institutionalized silence for almost 30 years and what changed to catalyze the transformation of CMP?[220] There are various reasons. With the prospect of the RoC acceding to the EU in the 1990s, a group of policy makers and bureaucrats succeeded in convincing political leaders of the need for the implementation of a new policy based on the need to decouple the solution of the Cyprus problem from the issue of missing persons and to manage this issue transparently both for TCs and GCs.[221] Although unilateral exhumations were attempted, this proved unsuccessful and in 2000, with the inclusion of TCs relatives for the first time, an authoritative list of missing persons was prepared.[222] This policy change was also strengthened by decisions against Turkey by the Council of Europe and the ECtHR which affected the TC political actors. These factors culminated in the policy of forensic truth and the resumption of the CMP.[223] Furthermore, although not implemented properly, in 1997, the two Cypriot leaders Rauf Denktaş and Glafkos Klerides agreed that all information available about burial sites would be circulated and investigated to facilitate identification.[224] In 2004, the TC leader sent a letter to the UN Secretary

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[216] Iosif Kovras, *Grassroots activism and the evolution of Transitional Justice: the Families of the Disappeared* (Cambridge University Press 2017) 1; for numbers see http://www.cmp-cyprus.org/content/facts-and-figures
[217] Ibid 155
[218] See <http://www.cmp-cyprus.org/content/facts-and-figures> accessed 7 March 2019; see also Kovras (n 216) 155
[219] Kovras (n 216) 155
[220] Ibid
[221] Ibid 164-5
[222] Ibid 166
[223] Ibid 168-9
[224] Ibid 170

General to assist in resuming the activities of the CMP and since then it has become the most successful bi-communal project.[225]

The CMP is a humanitarian body which cannot "attribute responsibility for the death of any missing persons or make any findings as to the cause of such deaths".[226] Confidentiality is also a reason for its success. The anthropological team of the CMP updates families about the forensic process and answers questions except about cause of death.[227] Persons providing information to the CMP would not be legally liable and would be immune from prosecution as directed by the Attorney General of the RoC. For this, the CMP was criticised for trading-off forensic truth with immunity for perpetrators/eyewitnesses.[228] On the other hand, this is the reason for its success regarding exhumations. To sum up, the CMP's current mandate ("forensic truth") does not include the relatives' right to truth for the missing which should include the right to know the truth about the abuses suffered, including the identity of perpetrators, the causes of death and violations, and the right to a remedy (which includes the right to an eff ective investigation, verification of facts, and public disclosure of the truth; and the right to reparation).[229] A non-governmental organsiation called "Truth Now" and lawyer Achilleas Demetriades propose to amend the terms of reference of the CMP to transform it into a committee which "will not attribute responsibility for the deaths of any missing persons but will make findings as to the circumstances and cause of such deaths".[230] Demetriades also suggests that there's no impediment to summon the relevant records of the CMP in a civil case in search for remedies. However, Kovras notes that this will affect the work of the CMP negatively since the eyewitnesses will be reluctant to provide information to the CMP.[231] It is not within the scope of this project to assess what kind of a truth-seeking process should be followed. Nevertheless, while addressing the needs in Cyprus in this regard, the expectations and the existing circumstances addressed above should be carefully considered.[232]

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[225] Ibid
[226] The terms of reference of the CMP para 11 can be found <http://www.cmp-cyprus.org/content/terms-reference-and-mandate> accessed 7 March 2017
[227] Kovras (n 216) 171-2
[228] Ibid 172
[229] Ibid
[230] Para 14 of Terms of Reference <http://truthnowcyprus.org/index.php/en/a-truth-commission-for-cyprus/item/27-proposal-for-amending-the-terms-of-reference-of-cmp> accessed 7 March 2017
[231] Kovras (n 216) 172-3
[232] Bronwyn Anne Leebaw, 'The Irreconcilable Goals of Transitional Justice' (2008) 30 Hum Rts Q 95, 96

The CMP is nevertheless a welcome experiment which, amongst other things, indicates that the two major communities in Cyprus can work together to solve this sensitive issue in the absence of a wider political solution to the Cyprus problem.[233] As Kovras indicates, a policy of delinking humanitarian exhumations from the prospect of a wider political solution paves the way for positive transformation in protracted human rights problems providing an opportunity to grassroots actors.[234] His argument is based on the fact that emotional, symbolic and identity issues, such as those of missing persons, are often taken hostage by hardliners who drag their feet to prevent solutions.[235] In other words, decoupling human rights issues and TJ policies from political negotiations can depoliticize debates.[236] In addition, the Cypriot experience can assist policy makers and TJ experts in dealing with similar problems in other parts of the world.[237] This is a point which the CMP experience can assist policy makers in dealing with property issues the same way.

2. Property Rights of the Displaced

Turkey's intervention on 20 July 1974 left 37 per cent of the island's territory in control of TCs[238] and resulted in the displacement of GCs from the northern part of the island and TCs from the south. It is estimated that GCs who fled from the north left behind an estimated 1,350,000 donums[239] of property and TCs about 400,000 donums of property in the south.[240] Approximately 142,000 GCs from the north became refugees in the south.[241] Many were settled in empty TC houses or in refugee

[233] Kovras (n 222) 175
[234]See Iosif Kovras, 'De-linkage processes and grassroots movements in transitional justice' (2012) 47 (1) Cooperation and Conflict 88, 98
[235] Ibid 98
[236] Ibid 98
[237] Ibid
[238] International Crisis Group, 'Cyprus: Bridging the Property Divide' (Report No.210 9 December 2010)
[239] Unit of measurement of the area of land used in Cyprus (1 donum = 0.33 acres = 1,338 squaremeters
[240] Mensur Akgün, Ayla Gürel, Mete Hatay and Sylvia Tiryaki, 'Quo Vadis Cyprus?' (Tesev Working Paper, April 2005) 35 (The displacement and donum numbers vary as addressed in Chapter 1, 1. See Ayla Gürel and Kudret Özersay, 'The Politics of Property in Cyprus, Conflicting Appeals to 'Bizonality' and 'Human Rights' by the Two Cypriot Communities' (Prio Report, 3/2006) 3, 8-9
[241] This term has incorrectly been used in Cyprus interchangably for internally displaced persons.

houses built on TC land. Again, approximately 55,000 TCs fled to the north, and were settled in GC property.[242]

It was noted in Chapter 1 that GC policy for TC properties remaining in the south has been significantly different from that of the TRNC. TCs are considered as legal owners of their properties in the south which were placed under the administration of the Minister of the Interior as "the Custodian" under Law No 131/1991. The custodian has all the rights and obligations which a TC owner would have. TC claims over these properties are dependent on strict conditions set forth in the Law. The Law was challenged various times before the ECtHR by TCs, the leading one being *Niazi Kazalı and Hakan Kazalı,* in which the application was declared inadmissible for non-exhaustion of domestic remedies pursuant to Article 35 of the ECHR.[243] It should be noted that the rights of TCs with respect to their properties remaining in the south is not within the scope of this research since a mechanism such as that of the IPC is not available there.

In this respect, the legal framework with regard to the properties of GCs left in the north between partitition in 1974 and the establishment of the IPC will now be considered.

3. Legislative Framework in the North Following Partition

In November 1974 following partition, the Turkish Administration enacted the Regulation on Resettlement and Rehabilitation to address the problem of displaced TCs in need of resettlement in the north. Primarily, these displaced TCs were allocated abandoned GC properties. The Regulation indicates that the Administration did not have the intention to grant a definite right and/or ownership to TCs who were allocated GC properties. In other words, the intention was to provide temporary shelter where the displaced TCs were given "allowance documents *(tahsis belgesi)*".[244] Allocation of properties was the subject of serious debates both by the

[242] Rebecca Bryant and Mete Hatay, 'Suing for Sovereignty: Property, Territory and the EU's Cyprus Problem' (Global Political Trends Center, Policy Brief, 2009) 4

[243] *Niazi Kazalı and Hakan Kazalı v. Cyprus* (Apps 49247/08 1545/07 1760/05 30792/05 3240/05 34776/06 38902/05 4080/06 49307/08) Admissibility (6 March 2012)

[244] *Hurşit Enver, Mağusa ile Müstedaaleyh: Gazi Mağusa İskân Şube Müdürü ve/veya İmar, İskân Bakanlığı vasıtasıyle KTFD arasında* [Hurşit Enver, Famagusta v Defendant: Famagusta Land Registry Office and/or the Ministry of Interior through Cyprus Turkish Federated State] Anayasa Mahkemesi 4/83, D.10/83 (22 November 1983)

politicians at the Assembly and ordinary people at this time. It has also been alleged that fraudulent claims were made, and that some GC properties were allocated by the authorities without proper examination of claims.[245] This exacerbated the problem because if property was allocated to someone who did not have the right to it, and if that person was later faced with the cancellation of that transaction, enormous objections were raised. In other words, "wrongful acts" became "rights" and legitimized looting during the post war period.[246] The system which was previously only related to properties, reflected itself in other fields of social life including early retirement laws, high premiums upon retirement or severance pay, low interest credits, complimentary grants, public sector jobs and promotions and unnecessary subventions.[247]

In August 1975, the two major community leaders Rauf Denktaş and Glafkos Klerides reached the Vienna Agreement III,[248] according to which TCs residing in the south would be able to move to the north if they wished to do so, GCs residing in the north would be able to stay in the north and would be provided facilities needed to carry on normal life, and GCs would also be able to move south if they wished to do so. Priority would also be given to the reunification of families. By September 1975, only 130 TCs remained in the south. The number of GCs in the north declined more gradually with 3,582 moving south during 1975, 5,820 during 1976, and 900 during 1977. By November 1981, 1,076 GCs remained in the north. The number later decreased further to 666, many very old. GCs claim this situation was 'the result of a sustained, campaign of harassment, discrimination and oppression' by the administration in the north that led to 'expulsion and gradual deterioration of the living conditions of the enclaved'.[249]

It is important to state how both sides interpret the Vienna III Agreement as this may indicate how they perceive the division of the island and the property issue. As Özersay and Gürel states, the TC side refers to the Agreement as the "Population Exchange Agreement" or the "Voluntary Re-grouping of Population Agreement". While the GCs refer to it as the "Vienna III (Humanitarian) Agreement", claiming "if

[245] Mete Hatay, 'Ganimetin Sosyal Adaleti'[Social Justice of Looting], *Havadis Gazetesi, Poli* (Nicosia, issue 270) (The author refers to the Minutes of the Assembly, February 1975)
[246] Ibid
[247] Mete Hatay, 'Ganimetin Sosyal Adaleti'[Social Justice of Looting], *HavadisGazetesi, Poli*, (Nicosia, issue 268)
[248] Gürel and Özersay (n 240) 17
[249] Akgün, Gürel, Hatay and Tiryaki (n 240) 35

implemented properly, it 'would have allowed 20,000 GCs and Maronites to stay and live a normal life in the occupied Karpasia Peninsula and the Maronite villages'".[250] It has also been claimed that the GC side accepted the agreement despite their fear that it might further institutionalise partition, because at that time, this was considered the only way to prevent the expulsion of the remaining 10,000 GCs from north to south as well as preventing TCs from being attacked by Greek paramilitaries while crossing to the north.[251] In other words, by allowing TCs to move north, GCs feared this would imply acceptance of bizonal federation impeding the return of all refugees to their homes.[252] However, the principle of bizonality was accepted as the basis of a solution in 1975 by GC leaders Clerides, in 1977 by Makarios and in 1979 by Kyprianou.[253] TCs believed that the two sides would negotiate "the respective compensation due to either community arising from this exchange".[254]

In 1977, Law No 41/1977 (the Law for Housing Allocation of Land, and Property of Equal Value (ITEM Law)) was enacted in northern Cyprus which, according to Özersay and Gürel, further indicated that the TCs assumed the property issue would be solved by way of comprehensive exchange between the two communities.[255]

Establishing a "points-based" system with the primary criterion that the properties "abandoned" in the south were of equal value in the north, this Law authorised abandoned properties belonging to GCs in the north to be allocated to TCs and to Turkish nationals who came to Cyprus after July 1974 upon condition that the owners relinquished all rights over their properties in the south for the benefit of the Turkish Federated State of Cyprus.[256] In fact, the system was designed to provide housing, land and livelihood in the north for TCs who had been displaced from the south, for example farmers with an average annual income below a specified minimum, and relatives of people killed during hostilities. However, the category of

[250] Gürel and Özersay (n 240) 18; See also Republic Of Cyprus Embassy in the USA, 'The Cyprus Problem in Perspective' (July 2000) (available at www.kypros.org/Embassy)
[251] Gürel and Özersay (n 240) 18; See also Glafkos Clerides, *Cyprus: My Deposition* (Alithia Publishing, Nicosia, 1992) 295-299
[252] Gürel and Özersay (n 240) 18, See also Clerides (n 251) 295-299 where he also mentions the Greek Cypriot leader Lyssarides' (the political party EDEK (United Central Democratic Union) leader) opinion opposing to the Agreement in this regard.
[253] Gürel and Özersay (n 240) 19 (It should be mentioned that the search for a negotiated settlement to the UN Secretary General's Good Offices back in 1967)
[254] Ibid
[255] Ibid 14
[256] Name of the state declared in 1975 by the TCs.

beneficiaries was later broadened[257] with points allocated to people who "served the state" and to those arriving from Turkey after July 1974, a system allegedly used for political purposes and unjust enrichment.[258]

Most importantly, Law No 41/1977 was amended in 1995 to permit the granting of title deeds, i.e. ownership, to various categories of TRNC citizens who had been allocated GC properties enabling current users to sell and for properties to change hands multiple times.[259] In 2005, the former TC leader Rauf Raif Denktaş said during an interview that this was to ensure people could buy, sell and deal with property freely to facilitate economic development in northern Cyprus.[260] While it might be said that GC properties abandoned in the north were means of rehabilitation for TCs, this would only be true if the system was limited to people displaced or those whose relatives were killed as a result of hostilities and in any case, allocating the properties of GCs was already a means for promoting economic stability. The argument by Denktaş in favour of the amendment in Law No 41/1977 is therefore difficult to accept.

Laws Nos 49/2003 and 67/2005 establishing the IPC were passed in the presence of the above legislation and mentality.

III. Conclusion

This Chapter reviewed the evolution of TJ in order to shed light on the goals and problems in the field. TJ provides a framework for dealing with the past in democratic transitions from armed conflict and authoritarianism. It attempts to advance more peaceful futures through institutional reform/GNR, reparations, truth and justice. While the limitations of TJ were addressed, it was observed that the field

[257] Deniz Ş Sert, 'Cyprus: Peace, Return and Property', (2010) 23(2) JRS 238, 246
[258] ibid 247
[259] Ibid. It should be noted that the GC policy has been significantly different from that of the TCs'. The TCs are considered as legal owners of the properties in the south. With the Custodian Law (Law No 131/1991), TC properties were placed under the management of the Minister of the Interior as the custodian. The Law prohibits the sale, exchange or transfer of abandoned property unless the custodian consents. Properties are leased to the displaced GCs or used for public purposes. Claiming rights over these properties by the TCs are dependent on strict conditions such as living in the south or abroad. The custodian has a wide discretion to lift the custodiaship over the TC properties. (See *Niazi Kazalı and Hakan Kazalı v. Cyprus* (n 243) TCs claim that they abandoned 130 villages in south, starting in 1963. They claim ownership over 16,200 properties where 5,000 of these are destroyed, 5,500 damaged and 5,700 inhabited by the GC displaced people. (See 'Cyprus: Bridging the Property Divide' (n 238) 3)
[260] Sert (n 257) 247

has expanded leading to the inclusion of a more transformative approach. Together with TJ, TTJ was chosen as a paradigm for this study as it emphasizes a longer term vision of rebuilding or transforming community relationships appropriate for the Cyprus context. At this point, we should distinguish negative peace, where the conditions which caused violent conflict remain, and a positive peace which eradicates the causes of violence, and focuses on broad social issues, and the demands of transformative justice.[261] In other words, there is still no positive peace, but rather relapsing into conflict is averted meaning that negative peace is in place.[262] Webel calls this an "absence of war and other widespread violence" in which there is also injustice and personal discord and dissatisfaction; a "weak or fragile peace".[263] As Yakinthou states, "the infrastructure […] perpetuates a culture of mistrust" in Cyprus.[264] A power-sharing peace agreement will not fix this automatically, so it must be dealt with separately.[265]

The members of both communities in Cyprus do not feel they belong to a common State, and their mutual distrust and suspicion prevents each from seeing the other in a positive and constructive spirit. The collapse of the RoC indicates how inadequately constructed relationships are prone to repeatedly fragment. It is evident that it will take a long time for the communities in Cyprus to restore their relationships while addressing the root causes of the conflict. While TJ would prove useful for both analytical and policy purposes, TTJ as the final stop on a TJ continuum should be considered as another useful framework which builds on the restorative and reparative justice approaches, with the institutional reform/GNR components of TJ being the main linking points between the two frameworks.

The number, type and timing of TJ mechanisms around the world were also addressed in this Chapter. The IPC as an institution for transition of property rights could be considered as an imposed mechanism as a result of the decisions of the ECtHR in the absence of a peace settlement agreement.

The framework for properties left in the north and south of the island following partition also illustrates the position of both sides. Since there is no positive peace in Cyprus, ambiguity prevails with the process for a solution of the

[261] See Johan Galtung, 'Violence, peace, and peace research' (1969) 6 (3) JPR 167
[262] See ibid
[263] Charles Webel Toward a philosophy and metapsychology of peace in Charles Webel and Johan Galtung eds Handbook of Peace and Conflict Studies Routledge 2007 , 11
[264] Yakinthou, 'Transitional Justice in Cyprus' (n 200) 10
[265] Ibid

Cyprus problem ongoing for more than 40 years. Property rights of the displaced Cypriots are an important component of the negotiations and it is likely that more balanced and efficient remedies than those afforded by the IPC Law would be afforded to right holders in case of an agreement. Therefore, despite the fact that the IPC provides remedies to GCs within the limited framework provided by its Law, it is not possible to achieve more rights than those afforded by it. From this perspective, the property problem for GC properties could be considered as stalled within the current mandate of the IPC. The same applies to the TC properties which are within the mandate of the Custodian as addressed in Chapter 1 and considered by the decision of the ECtHR in *Niazi Kazali and others.* This is why living in liminality is considered as a feature of contemporary Cyprus. As long as partititon remains as it is, it is important to understand the extent to which institutions, processes and developments affect this positively, negatively or not at all. The potential of the IPC is an important element in this regard.

Chapter 3 Conflict Resolution and Peacebuilding Efforts

I. Introduction

It was noted in Chapter 1 that, in Cyprus, there is an ongoing "peace process" and/or "peace talks" in the words of the UN itself[1] with the UN acting as mediator for the resolution of the conflict. In the last decade of the negotiations to resolve the "frozen Cyprus conflict",[2] the parties came close to a settlement on the basis of the Annan Plan. However, the process ended without success when, in referendums held on both parts of the island on 24 April 2004, GCs rejected the Plan with a 76% "No" vote while TCs supported it with a 65% "Yes" vote. Although it was said that the TC leader Mustafa Akinci and GC leader Nicos Anastasiades had made unprecedented progress in the chapters on "governance and power-sharing", "property", "territory", "EU and economy" in the previous two years, this round of negotiations also ended without agreement in July 2017.[3]

On many occasions, the UN has played a central role in attempting to overcome the Cyprus deadlock. Resolution 186 (1964)[4] established the UN operation in Cyprus which "tried to provide a comprehensive peace-keeping, peace-making and peacebuilding structure in order to bring peace to the island".[5] The 1964 resolution stated that the goals of the UN mission for peacekeeping and peacemaking were to find a constitutional settlement and to control the outbreak of war in Cyprus. Over the years, the UN's involvement in the conflict has been extensive.[6]

Major UN entities including the United Nations Peacekeeping Force in Cyprus (UNFICYP), the Office of the Special Advisor for the Secretary General (OSASG), and the United Nations Development Programme (UNDP), have been involved in Cyprus. The UNFICYP focuses on monitoring the ceasefire and maintaining the security of the buffer zone. The OSASG has the duty of facilitating the Cypriot-led peace process. The UNDP has focused on both the official-level negotiations and on the environment around the process, including through

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[1] See http://www.uncyprustalks.org> accessed 14 January 2020

[2] Iosif Kovras *Grassroots activism and the evolution of transitional justice: the families of the disappeared* (Cambridge University Press 2017) 154

[3] 'Cyprus talks end without agreement, says UN chief', *The Guardian* (7 July 2017) <https://guardian.ng/news/cyprus-talks-end-without-agreement-says-un-chief/> accessed 13 July 2017

[4] UN Security Council Resolution 186, S/5575 (4 March 1964)

[5] Oliver Richmond, 'UN Mediation in Cyprus, 1964–65: Setting a Precedent for Peace-making?', in James Ker-Lindsay and Oliver Richmond (eds) *The Work of the UN in Cyprus: Promoting Peace and Development* (Hampshire, Palgrave Macmillan, 2001) 102

[6] Chrystalla Yakinthou, *Political Settlements in Divided Societies: Consociationalism and Cyprus* (Palgrave Macmillan 2009)123

supporting the technical committees, confidence building measures, and gender and civil society initiatives.[7] The full history of peacebuilding activities to date has been documented by Hadjipavlou and Kanol.[8] Most of the activities have taken the form of problem-solving workshops complemented by others such as bi-communal camps for young people. Some events have also concentrated on peace advocacy in the form of bi-communal demonstrations and inside lobbying in the form of one-on-one communication with the policy-makers.[9]

Being aware of its limited ability to further domestic incentives for resolution, the UN has also relied on American and British organisations to develop relations between Greek and Turkish Cypriots.[10] For example, the Fulbright Commission and Scholarship Program, the British Council, and USAID have often worked with relevant UN agencies.[11] The Fulbright Commission also has an assessment report of conflict resolution trainings for the period 1993 to 1998.[12] There are other studies which have considered the failures of mediation in the conflict.[13] There are many NGOs and conflict resolution agencies operating in Cyprus on separate but similar agendas. However, track-two diplomacy has largely failed to shift the entrenched positions of the Greek and Turkish Cypriots.[14]

Fisher argues that mediation efforts have resulted in parties being "caught in self-defeating processes of antagonism, including blaming the other side, attributing negative qualities to them, and polarizing one's own side against them".[15] Some scholars suggest that a lasting peace requires both sides to overcome both internal and external conditions— psychological and contextual factors—since these continue to create obstacles for a solution.[16] Mediation, arbitration, and negotiation are some

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[7] See <https://www.cy.undp.org/content/cyprus/en/home/about-us/undp-and-the-un.html> accessed 10 February 2020

[8] Maria Hadjipavlou and Bülent Kanol, 'Cumulative impact case study: The impacts of peacebuilding work on the Cyprus conflict' (CDA Collaborative Learning Projects 2008)

[9] Bülent Kanol and Direnç Kanol, 'Roadblocks to Peacebuilding Activities in Cyprus: International Peacebuilding Actors' Handling of the Recognition Issue' (2013) 4 (2) Journal of Conflictology 39, 41

[10] Yakinthou, *Political Settlements in Divided Societies* (n 6) 127-8

[11] Ibid

[12] See Marion Peters Angelica, 'Conflict Resolution Training Efforts Sponsored by the Fullbright Commission (1993-1998) (Nicosia: Cyprus Fullbright Commission 1999)

[13] See David Reilly, 'Teaching Conflict Resolution: A Model for Student Research in Cyprus' (2013) 30 (4) Conflict Resolution Quarterly 447, 452; Ronald J Fisher, 'Cyprus: The Failure of Mediation and the Escalation of an Identity-Based Conflict to an Adversarial Impasse' (2001) 38 (3) Journal of Peace Research 307

[14] Yakinthou, *Political Settlements in Divided Societies* (n 6) 127-8

[15] Fisher (n 13) 322

[16] Maria Hadjipavlou, 'The Cyprus Conflict: Root Causes and Implications for Peacebuilding' (2007) 44 Journal of Peace Research 349, 363-4

of the main options and traditional conflict management tools used to resolve conflicts in a nonviolent manner. The UN acts as the universally accepted third-party mediator in the case of Cyprus. Conflict resolution efforts has not concentrated on common interests and needs as suggested by the prenegotiation, social-psychological, and needs theories.[17] These were often brushed aside and the needs for security, recognition, identity, equality, justice, dignity, and the three freedoms (of movement, settlement, and ownership) were addressed only in a political and legalistic context. Each side expected the other to make compromises and concessions unilaterally. In other words, each party worked to fulfill its own needs; i.e. there has been no concern for integration.[18]

In order to understand where we are today, how the negotiations have continued so far shall be outlined in this Chapter. In this respect, basic parameters of negotiations will also be touched upon in general to show how much the two sides have been ready to take a step back from their original positions and how much they have been willing to compromise, if at all.[19] The phases of the negotiations are addressed in detail in order to give an idea of the course of events. Furthermore, the factors behind the outcome are also outlined and assessed.

The Annan Plan is the most concerted and detailed agreement put forth by the UN to reach a federal solution to the Cyprus problem. The property scheme it envisages will be considered to shed light on the importance attached to this issue by the two communities.

II. An Overview of the Inter-communal Negotiations

A. 1963-67: Attempts by External Powers

As indicated in Chapter 1, the RoC was established in August 1960. Through the summer and autumn of 1963, tensions rapidly built up with the differences between the two communities coming to a head over the issues of tax laws, municipalities,

[17] Maria Hadjipavlou-Trigeorgis and Lenos Trigeorgis Source 'Cyprus: An Evolutionary Approach to Conflict Resolution Author(s)' (1993) 37 (2) The Journal of Conflict Resolution 340, 341, 346
[18] Ibid 346
[19] See Constantinos Adamides and Costas M.Constantinou, 'Comfortable Conflict and (Il)liberal Peace in Cyprus' in Oliver P Richmond and Audra Mitchell (eds) *Hybrid forms of Peace: From Everyday Agency to Post-Liberalism* (Palgrave Macmillan 2012) 243

police and gendarmerie.[20] In November, Makarios submitted proposals for amending the Constitution but Turkey and the TCs rejected these stating that the intention was to abrogate the fundamental elements of the Constitution and their rights as considered in Chapter 1.[21] The tensions not only greatly disturbed the Greek and Turkish Governments but also caused a rift within NATO.[22] The US and the UK in particular, considered the Cyprus problem as a dangerous dispute which had to be controlled before it escalated into an armed conflict between two NATO allies; Turkey and Greece.[23] However, the first attempts by the US to mediate were unsuccessful.[24]

On 4 March 1964 the UN Security Council passed Resolution 186 calling for stationing of UN peacekeeping-force (UNFICYP) with the consent of the Government of Cyprus and recommended that a mediator be appointed.[25]

The main objective of the negotiations during this period was to prevent a conflict between Greece and Turkey and most of the time, the two Cypriot communities were not even invited to negotiations.[26] The efforts during this period were similar to those establishing the RoC in 1960 and, as stated in Chapter 1, following the establishment of the Republic the limited participation of the two Cypriot community leaders led to substantial unrest and dissatisfaction.[27] To sum up, this period can be defined as mainly externally driven and dictated by the interests and/or motivations of the external powers; i.e. a top-down process. No steps were taken to pave the way for reconciliation, restoration or any other mechanism of

[20] Zaim M Necatigil, *The Cyprus Question and the Turkish Position in International Law* (2nd ed, Oxford University Press 1990) xiv

[21] Ibid xv

[22] Ibid 29-42; see also Van Coufoudakis 'United Nations Peacekeeping and the Cyprus Question' (1976) 29 (3) The Western Political Quarterly 457, 459

[23] Ahmet Sözen 'The Cyprus Negotiations: From the 1963 Inter-communal Negotiations to the Annan Plan' in Ahmet Sözen (ed) *Reflections on the Cyprus Problem: Compilation of Recent Academic Contributions* (Cyprus Policy Center 2004) , 2; see also Necatigil (n 20) 42

[24] Ibid 2

[25] Ibid. The mandate of the force has been renewed at six-month intervals since its creation in 1964. For GC and TC opinion on the interpretation and implementation on UNFICYP's mandate see Necatigil (n 20) 45; See also Meltem Müftüler-Bac, 'The Cyprus Debacle: What the Future Holds' (1999) 31 Futures 559, 563

[26] Sözen 'The Cyprus Negotiations' (n 23) 3

[27] Jenna C Borders, 'Another Door Closed: Resort to the European Court of Human Rights for Relief from the Turkish Invasion of 1974 May No Longer Be Possible for Greek Cypriots' (2010) 36 NCJ Int.l & Com Reg 689, 694; see also Hadjipavlou-Trigeorgis and Trigeorgis (n 17) 344-345; see also Alexis Heraclides, 'The Cyprus Gordion Knot: An Intractable Ethnic Conflict' (2011) 17 (2) Nationalism and Ethnic Politics 117, 120

transitional justice. Attitudes and actions of the disputants also undermined any peacemaking potential.[28] The result was therefore not surprising.

B. 1975-79: The Basis of Future Negotiations

Between 1968 and 1974, negotiations continued on and off until the Greek coup of 15 July 1974. The TC side wanted to follow a ”total package” approach insisting that all issues should be agreed before an agreement was signed, while the GCs wanted a “piecemeal” approach insisting that the issues should be considered and agreed upon separately.[29]

Following the unilateral military intervention of Turkey on 20 July 1974, the UN Security Council adopted Resolution 353 calling for the guarantor powers to negotiate to restore peace in Cyprus.[30]

In 1975-76, two conferences were held in Geneva but the two communities were only invited to the second one.[31] On 13 February 1975, the TCs proclaimed the Turkish Federated State of Cyprus. In Resolution 367 the Security Council expressed its regret and called for new efforts to resume negotiations.[32] The inter-communal talks in Vienna between 28 April 1975 and February 1976,[33] lead to the Vienna Agreement which enabled the transfer of TCs wishing to leave the south and GCs wishing to leave the north as noted in Chapter 1. This was also the first time the island was officially divided into two distinct zones.

Meetings between Denktaş and Makarios continued including one on 12 February 1977 in the presence of the UN Secretary General.[34] It was envisaged that an independent, non-aligned bi-communal federal republic would be sought, the territory under the administration of each community would be discussed in the light of economic viability or productivity and land ownership, questions of principle (such as freedom of movement, freedom of settlement, the right to property and other specific matters) would be open for discussion, certain practical difficulties which may arise for the TC community would be taken into consideration and, the powers

[28] See also Coufoudakis (n 22) 472
[29] Sözen, ‘The Cyprus Negotiations’ (n 23) 4
[30] UN Security Council Resolution Res 353, S/Res/353 (20 July 1974)
[31] Sözen ‘The Cyprus Negotiations’ (n 23) 4
[32] UN Security Council Resolution Res 367, S/Res/367 (12 March 1975)
[33] Necatigil (n 20) 128
[34] Report of the Secretay-General Pursuant to Paragraph 6 of the Security Council Reolution 401 (1976) S/12323 (30 April 1977); see also Fisher (n 13) 314

and functions of the central federal government would take the bi-communal character of the state into account.[35] On 18-19 May 1979, Denktaş and Kyprianou[36] settled the "Ten-Point Agreement" confirming the four guidelines and envisaging, among other things, the resettlement of the fenced-off area of Varosha[37] under the auspices of the UN.[38] In addition to the four guidelines, the Agreement became the reference point for future negotiations culminating in the 1977- 79 High Level Agreements,[39] which provided a clear policy for the first time.[40]

C. 1984-86: Further UN Efforts

On 15 November 1983, the TC legislative assembly declared the establishment of the TRNC, which only Turkey recognised as legitimate and which was condemned by the rest of the international community.[41] The talks stalled once again until 1984.[42]

During 1984-86, the UN abandoned the "mini-package" approach and resorted to a "comprehensive solution" which, to preserve their "bargaining power" on major concerns, was always favoured by the Turkish side.[43]

In 1984, Perez de Cuellar drafted a Framework Agreement, modified several times, which was finally announced by Kyprianou as unacceptable.[44] In 1985, a new document was drafted, but, this time, rejected by Denktaş.[45]

In 1986, a new draft was proposed which was accepted by Denktaş and rejected by Kyprianou after consultations with Greece.[46]

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[35] Necatigil (n 20) 129
[36] The President of GCs elected on 26 January 1978 after Makarios passed away.
[37] Fenced-off Varosha is part of the town of Famagusta. It has remained uninhabited since Turkey's intervention in 1974. It is a closed military area. The UN Security Council has called for this area to be handed over to the UN prior to its resettlement by its rightful inhabitants (See for example UN Security Council Res 550 (11 May 1984) S/Res/550) It is estimated that 40,000 refugees could be resettled if the area was returned; see also Kypros Chrysostomides, *The Republic of Cyprus: A Study in International Law* (Martinus Nijhoff Publishers 2000) 174
[38] See Report of the Secretary General on His Mission of Good Offices in Cyprus S/13369 (31 May 1979) paras 61-4; Sözen 'The Cyprus Negotiations' (n 23) 5; see also International Crisis Group, 'Cyprus: Bridging the Property Divide, ' (Report No.210, 9 December 2010) 5
[39] Sözen 'The Cyprus Negotiations' (n 23) 5
[40] Evanthis Hatzivassilou 'The Red Line: Pressure and Persuasion in Greek Diplomatic Strategies on Cyprus, 1945 to 2004' (2009) 20 (1) Mediterranean Quarterly 52, 61
[41] See Benjamin M Meier 'Reunification of Cyprus: The Possibility of Peace in the Wake of Past Failure' (2011) 34 (2) Cornell Int'l L J 455, 466
[42] Ibid 466; Sözen 'The Cyprus Negotiations' (n 23) 7
[43] Sözen 'The Cyprus Negotiations' (n 23) 7
[44] Ibid 7-8
[45] Ibid 9
[46] Ibid 10

During this period, the US and the UK reflected the Draft Framework Agreement as the last and best chance for the two communities.[47] Chrysostomos states that the efforts of 1984-86 failed whilst, in May 1985, a referendum was held in the north for the constitution of the TRNC and that no actual negotiations took place until 1988.[48]

In the final analysis, it can be said that the will of the two sides to solve the problem was not strong enough during this period. Furthermore, as it turned out, this would not be the last "last and best chance" of the two communities to reach an agreement.

D. 1988 -1992: Renewed Efforts to Find a Solution

Although Vassiliou[49] was more flexible, he, like the previous GC leaders, considered the Cyprus problem as an issue of foreign attack by Turkey assuming that the whole conflict started in 1974.[50] Denktaş on the other hand, brought such concepts as "separate sovereignty for each community" forward, which were inconsistent with the UN Secretary-General's resolutions and 1977-79 High Level Agreements.[51]

An important outcome of this period was the adoption of the UN Security Council Resolution 649 on 12 March 1990, the first time to state[52] that the two communities were to be treated on "equal footing". There were no reference to "the Government of Cyprus" or to "the Turkish Cypriot community", but to "the two communities" and "the leaders of the communities".[53]

In August 1992, the UN Secretary General Boutros Ghali put forth a "Set of Ideas" based on content previously prepared by Perez de Cuellar.[54] This was a very detailed plan consisting of 100 paragraphs where the bi-zonal, bi-communal federation model, with two politically equal federated states, took shape and was

[47] Ibid 10
[48] Chrysostomides (n 37) 393
[49] Subsequent President of GCs
[50] See note 9 Sözen, 'The Cyprus Negotiations' (n 23) 11
[51] ibid 11; see also Chrysostomides (n 37) 401 where the author considers that the basic problem from 1988 to 1990 was the fact that the Turkish side insisted upon an upgrading of the TC community to a 'people' with political equality with the GCs community and the recognition of the right to self-determination for the TCs; see also Fisher (n 13) 316
[52] The principle of bizonality was formally endorsed by the Security Council with this resolution as a parameter for a solution.
[53] Sözen 'The Cyprus Negotiations' (n 23) 12; Chrysostomides, (n 37) 401
[54] Chrysostomides (n 37) 405-406; "Set of Ideas" was later adopted by the UN Security Council Resolution Res 774, S/Res/774 (26 August 1992)

submitted on 21 August 1992 to the Security Council with the Report of the Secretary General.[55] The Report also included a map for territorial adjustments and envisaged a property settlement.[56]

However, since the Set of Ideas was rejected[57] and by 1992, the UN was getting fed up with the future of the two communities to reach agreement,[58] attention turned instead to 'confidence building measures'.

E. 1992-94: Lack of Trust Between the Two Communities

The Secretary-General was of the opinion that a number of confidence building measures should be adopted by each side to advance the goal of the forthcoming joint meetings for an overall settlement agreement.[59] Thus, on 24 November 1992, he drafted 15 confidence building measures (CBMs) which were endorsed by the Security Council.[60] These included humanitarian, social and economic measures amongst which were the opening of the fenced-off Varosha and the opening of Nicosia International Airport discussed by both sides in detail.[61] As was the case for negotiations, the talks with respect to the CBMs were inconclusive. Sözen, who worked in the Political and Legal issues Sub-committee of the TC side for CBMs, claims the CBMs were politicized by both sides and acceptance or rejection of any of them was merely a bargaining tactic. Thus, the main goal of the CBMs, "building trust", proved futile.[62] In addition to this environment, the fact that Greek Cypriots

[55] See Annex of the Report of the Secretary General on His Mission of Good Offices in Cyprus (21 August 1992) S/24472; see also Andreas Theophanous 'Revisiting the Cyprus Question and the Way Forward' (2017) 15 (4) Turkish Policy Quarterly 37, 43; see also Cyprus: Bridging the Property Divide (n 38) 5

[56] Paras 72-85 of the Annex of the Report of the Secretary General (21 August 1992) (Ghali Set of Ideas)

[57] Sözen 'The Cyprus Negotiations' (n 23) 12. Denktaş agreed to 91 paragraphs, but added his concern for the remaining 9. He also rejected the map. Vassiliou accepted the Set of Ideas and the map as the basis for an overall agreement, subject to any improvements in favour of the two communities; see Sözen 'The Cyprus Negotiations' (n 23) 13 note 11; see also Chrysostomides (n 37) 407 where the author states that this was a consequence of the insistence of the Turkish side to achieve rotating presidency, separate sovereignty, more concessions to undermine the rights of the displaced GCs.

[58] Sözen, 'The Cyprus Negotiations' (n 23) 13

[59] Report of the Secretary General on His Mission of Good Offices in Cyprus S/24830 (19 November 1992) para 63; see also Müftüler-Bac (n 25) 563

[60] Report of the Secretary-General on His Mission of Good Offices in Cyprus S/26026 (1 July 1993)

[61] Sözen, 'The Cyprus Negotiations' (n 23) 15

[62] Ibid 15 note 14-15

hailed the decision of the European Court of Justice on 5 July 1994 banning TRNC exports to the UK worsened the situation.[63]

F. 1994-2001: The Republic of Cyprus Accession Negotiations with the European Union

The two leaders did not meet again until July 1997 and prior to the EU opening accession negotiations with the RoC in March 1998.[64]

With the support of the UK and the US, the UN Secretary General Kofi Annan initiated a new process in the autumn of 1999.[65] At the EU Council Helsinki Summit in December 1999, the EU encouraged a solution but did not make it a prerequisite for accession of Cyprus to the EU. In addition, the candidacy of Turkey was expected to contribute to a solution on the island when it was announced.[66] While criticising Turkey's acceptance of the conditions set forth at the Helsinki summit, Denktaş nevertheless remained at the negotiating table due to pressure from Turkey.[67] In 2000, the talks plunged into deadlock again as a result of Denktaş leaving the negotiation table denouncing the Secretary General's new framework for not including the term "confederation".[68] In 2001, the two parties decided to initiate face-to-face talks, and in November 2002, the first version of what became known as the Annan Plan was presented to both sides.[69]

G. 2002-03: The Annan Plan

1. The Framework put forth by the Plan

The Annan Plan revised five times to accommodate GC and TC demands is the most comprehensive and detailed plan put forward so far for the resolution of the Cyprus

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[63] Case C-432/92 *The Queen v Minister of Agriculture, Fisheries and Food, ex parte S. P. Anastasiou (Pissouri) Ltd and others* [1994] ECR I-03087
[64] Sözen 'The Cyprus Negotiations' (n 23) 16
[65] Theophanous (n 55) 43
[66] Ibid
[67] Sözen 'The Cyprus Negotiations' (n 23) 16
[68] Nathalie Tocci 'The Missed Opportunity to Promote Reunification in Cyprus' in Ahmet Sözen (ed) *The Cyprus Conflict: Looking Ahead* (Cyprus Policy Center 2008) 129
[69] Sözen 'The Cyprus Negotiations' (n 23) 16; see also Celement Dodd, 'Constitutional Features of the UN Plan and its Antecedents' (2005) 6 (1) Turkish Studies 39, 44. In the meantime Clerides lost the elections in 2003 and Papadopoulos was elected.

problem.[70] It was built on the 1977-79 High Level Agreements, de Cuellar's Draft Framework Agreement, the Set of Ideas and the guidelines set out by the UN Security Council.[71] The process leading to the referendums in 2004 was also unique because the UN Secretary General Kofi Annan invited the representatives of the two communities, Turkey and Greece to New York in February 2004 to see whether they accepted his conditions for the resumption of talks. Due to pressure from Greece, Turkey, the US, the UN and the EU, the TCs and GCs accepted them.[72] The two sides were to negotiate until 21 March and had they not agreed by 29 March, the UN would have filled in the gaps in the agreement.[73] The fifth version of the Annan Plan dated 31 March 2004 was produced by the UN under these circumstances. As already indicated, the Plan was put to separate and simultaneous referendums on 24 April 2004 and was rejected by 76% "No" vote of the Greek Cypriots, and 65% "Yes" of the Turkish Cypriots.[74]

The Plan proposed a "United Cyprus Republic" as a federal state based on the principle of consociational democracy.[75] The two communities would have acknowledged that their relationship is not one of majority and minority, but of political equality.[76] The State would have consisted of two constituent states; the Greek Cypriot Constituent State and the Turkish Cypriot Constituent State,[77] each exercising powers not vested in the Federal State.[78]

Mallinson notes that there were partitionist elements in the Annan Plan V and argues that disproportionate power was given to the minority (TCs), the Senate being composed of an equal number of members from each community.[79] However, it is

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[70] Sözen 'The Cyprus Negotiations' (n 23) 17

[71] ibid 17; International Crisis Group, 'Cyprus: Bridging the Property Divide' (n 38) 6; Evanthis Hatzivassilou, 'The Red Line: Pressure and Persuasion in Greek Diplomatic Strategies on Cyprus, 1945 to 2004' (2009) 20 (1) Mediterranean Quarterly 52, 62; UN Security Council Resolution Res 1251, S/Res/1251 (29 June 1999) para 11 states that a settlement must be based on a single sovereignty of a State of Cyprus, single international personality and single citizenship, comprising two politically equal communities as described in other Security Council Resolutions, in a bi-communal, bi-zonal federation.

[72] Sözen, 'The Cyprus Negotiations' (n 23) 17

[73] Ibid 17

[74] Ibid 17-18

[75] Nikos Skoutaris, *The Cyprus Issue: The Four Freedoms in a Member State under Siege (*Hart Publishing 2011) 39; For consociational democracy see in general Sue M Halpern 'The Disorderly Universe of Consociational Democracy' (1986) 9 Western European Politics 181

[76] Main Article iii of the Foundation Agreement

[77] Article 2(1) (a) of the Foundation Agreement and 1(1) of the Constitution.

[78] Article 14 of the Constitution

[79] William Mallinson, *Partititon Through Foreign Aggression, The Case of Turkey in Cyprus* (University of Minnesota 2010) 40

not possible to agree with Mallinson since the structure proposed by the Plan was based on "political equality" which was accepted by the parties and endorsed by the Security Council.[80] Furthermore, as noted by the Secretary General, political equality should be reflected in various ways: in the effective participation of the two communities in all organs and decisions of the federal Government, in safeguards to ensure that the federal Government cannot make decisions against the interests of one community, in the requirement that the federal Constitution be amended with the concurrent approval of both communities and in the equality and identical powers and functions of the two federated states.[81] Furthermore, according to Elazar, a federal arrangement is a partnership reflecting a sharing of powers based on a mutual recognition of the integrity of each partner.[82] Therefore, proposing otherwise would have been against the parameters established by the UN as well as the concept of power-sharing. Although there is a lot to examine on the structural features of this new state of affairs, it is not necessary to address them all here since these are not particularly relevant to this thesis.

The Plan also set out the establishment of an independent, impartial Reconciliation Commission which would not have prosecutorial or criminal legal functions or powers to promote understanding, tolerance and mutual respect between the two communities.[83] Among other things, the Commission would have prepared a report on the history of Cyprus based on the experiences of TCs and GCs.[84] It would in other words, have been a mechanism establishing a historical account on the basis of subjective experience, and its work would have provided for the basis of transitional justice policy recommendations. It should be stated however, that although the issue of "reconciliation" is vital in post-conflict societies, the Commission envisaged by the Annan Plan had not even been a matter of public discussion during the process which led to the referendums. The lack of debate, at official/political as well as at social level, can probably be explained partly in terms of a sense by the two sides that they would have little to gain or perhaps even more to lose by accepting such a contentious proposal. It can further be considered to reflect

[80] UN Security Council Resolution Res 716, S/Res/716 (11 October 1991)
[81] Report of the Secretary General on His Mission of Good Offices in Cyprus S/21183 (8 March 1990) para 6; see also Report of the Secretary General on his Mission of Good Offices in Cyprus S/23780 (3 April 1992) para 11
[82] Daniel J Elazar, *Exploring Federalism* (The University of Alabama Press 1987) 5-6
[83] Article 11, Main Articles; Article 3 Annex VIII
[84] Article 2 Annex VIII

the continuing meta-conflict; i.e. the lack of consensus on what the conflict is about or whom to blame for it.

2. Reactions to the Plan

As stated above, the vast majority of the GCs rejected the Plan on the grounds that there were no satisfactory guarantees in place for its implementation, the Treaty of Guarantee (which was part of the system created by 1959-60 London-Zurich Agreements) would have been applied *mutatis mutandis* in the new state of affairs, withdrawal of Turkish troops would have not taken place soon enough, the number of troops to remain on the island was not acceptable, the complex restitution scheme was not satisfactory because of the amount of compensation it provided for each displaced person's property, Turkey's contribution for the compensation of properties was not satisfactory, and the issue of settlers (Turkish nationals who came to Cyprus after 1974 intervention) was deemed not to have been satisfactorily addressed.[85] There was also the assumption that Turkey could informally intervene in Cyprus' political affairs.[86] Moreover, concerns were raised that the complex governmental arrangements were unworkable and that there were no provisions to deal with the situation if the Plan collapsed.[87] Finally, the Greek Cypriot side believed that when the Republic of Cyprus became a member of the EU, the opportunity for them to reach a solution in line with their point of view would be enhanced.[88]

Papadopoulos, the President of the Republic, also addressed these issues among others in his emotional speech on television on 7 April 2004. He urged the

[85] Alexandros Lordos, 'Can the Cyprus Problem be solved? Understanding the Greek Cypriot Response to the UN Peace Plan for Cyprus', 61-63, <http://www.philokypros.net/resources/Can-the-Cyprus-Problem-be-Solved.pdf> accessed 26 August 2017; see also Claire Palley, *An International Relations Debacle, The UN Secretary-General's Mission of Good Offices in Cyprus 1999-2004* (Hart Publishing 2004) 223, 224 for other security concerns in more detail.

[86] Palley (n 85) 227-228, 234; See also Mallinson (n 79) 40 - 41

[87] Palley (n 85) 235; a recent survey suggests that interference by Turkey and the possible dysfunctionality of the reunited federal state have still been the major worries for GCs, while, at the ame time, 58.2% of whom have still been committed to a bizonal bicommunal federation. – see Charis Psaltis, Huseyin Cakal, Neophytos Loizides and Işık K Bonnenfant, 'Internally Displaced Persons and the Cyprus Peace Process' (2020) 4 (1) International Political Science Review 138, 146

[88] Ayla Gürel and Kudret Özersay, 'The Politics of Property in Cyprus, Conflicting Appeals to 'Bizonality' and 'Human Rights' by the Two Cypriot Communities' (Prio Report, 3/2006) 31; see also International Crisis Group, 'Cyprus: Bridging the Property Divide' (n 38) 7

Greek Cypriots to say "No" to the Plan declaring in tears, "I received a state; I will not deliver a community".[89]

The general atmosphere was also negative. Only the former President Clerides' Democratic Rally (DISY) and Vassiliou's (former President (1988 – 1993) of the Republic of Cypurs) liberal party campaigned for a "yes". The Greek government under Prime Minister Costas Karamanlis also supported the plan. Even Progressive Party of Working People (AKEL), the political party most oriented towards a solution, went for a cautious/soft "no". The "No" campaign also found a considerable voice in the press.[90]

On the TC side, Denktaş preserved his negative position. However, supported by the Turkish Prime Minister Erdoğan who made it clear that the Plan was in the interests of Turkey, Prime Minister Talat was in favour of the Plan.[91] TCs demanding a solution which would pave the way for them to join the EU with their GC partners as a unified state under a federal system and protesting against Denktaş's intransigence, flooded on to the streets.[92] A further but expected disappointment for the TCs was the success of the Republic of Cyprus' application to join the EU on 1 May 2004 as a single state although it could not exercise effective control over the whole island.[93] The application of the EU *acquis* is suspended in north Cyprus pending a political settlement.[94]

3. After the Referendums

Sözen states that the Annan Plan was not an ideal one for any of the parties since, from every point of view, it did not leave enough room for demands to be

[89] Nikos Skoutaris, 'Building transitional justice mechanisms without a peace settlement: a critical appraisal of recent case law of the Strasbourg Court on the Cyprus issue', (2010) EL Rev 720, 720; Frank Hoffmeister, *Legal Aspects of the Cyprus Problem, Annan Plan and EU Accession* (Martinus Nijhoff Publishers 2006) 180

[90] Hoffmeister (n 89) 180; see also 'Greek Cypriot leaders reject Annan plan' *The Guardian* (22 April 2004) <https://www.theguardian.com/world/2004/apr/22/eu.cyprus> accessed 30 October 2018

[91] Hoffmeister (n 89) 180 -181

[92] See Mete Hatay and Rebecca Bryant, 'Negotiating the Cyprus Problem(s)' (Tesev Publications 2011) 10; see also Rebecca Bryant 'Living with Liminality: De Facto States of the Threshold of the Global', (2014) 20 (2) Brown Journal of World Affairs 125, 132

[93] Chrysostomides (n 37) Part 6. The author discusses the whole process regarding the EU membership as well as the arguments with respect to the Republic's entitlement of accession to the EU in the face of the provisions of the Treaty of Guarantee and the Constitution of the Republic of Cyprus.

[94] Skoutaris (n 89) 45; Hoffmeister (n 89) xi

maximised.[95] He also claims, the result of the referendums showed that the TC side had the necessary goodwill while the GC side was not ready to embrace power-sharing and political equality with the TCs. Despite this, they "were rewarded by the EU membership".[96]

In his report of 28 May 2004 submitted to the Security Council, the Secretary General Kofi Annan welcomed the decision of the TCs noting that by accepting the Plan, the TCs had deconstructed the decades-old policies of seeking recognition of the TRNC.[97] He called for the international community, including the Security Council, to reconsider the restrictions and barriers the TCs facing as "embargoes", adding of course that recognition is clearly contrary to Security Council resolutions. On the other hand, he was of the opinion that the vote had undone the rationale for pressuring and isolating the TCs.[98] In fact, although the EU Commission proceeded to lift the isolation for the TC community, as a member of the EU, the RoC had the power to prevent the straightforward adoption of the regulations it proposed. Thus, lifting isolation for the north was only partially fulfilled. Naturally, this caused a sense of injustice among the Turkish Cypriots.[99]

After the referendums, observers noted that "the Cyprus problem is all about property".[100] Furthermore, it was asserted that the property provisions of the Plan were central for a "Yes" or "No" at the referendums[101] and starting from 2008, the TCs proposed restitution, exchange and compensation as remedies for dispossessed owners where "eligibility" was determined by a clear set of criteria taking the Annan Plan as a starting point.[102]

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[95] Sözen 'The Cyprus Negotiations' (n 23) 18
[96] Ibid
[97] For contradiciting views in this regard see Kudret Özersay 'Separate Simultaneous Referenda in Cyprus: Was it a "Fact" or an "Illusion"?' in Ahmet Sözen (ed) *Reflections on the Cyprus Problem: Compilation of Recent Academic Contributions* (Cyprus Policy Center 2004)
[98] Report of the Secretary-General on his mission of good offices in Cyprus S/2004/437 (28 May 2004) paras 87-90
[99] Erol Kaymak, 'Growing Apart, Cementing Division: Civil Society and the Dearth of Ideas' in Ahmet Sözen (ed) *The Cyprus Conflict Looking Ahead* (Eastern Mediterranean University Printing House 2008) 246-257
[100] Hatay and Bryant, 'Negotiating the Cyprus Problem(s)' (n 92) 13
[101] Ibid 13
[102] Ibid 14

4. The Annan Plan Property Scheme

The UN Secretary General Kofi Annan states in his report of 1 April 2003 that almost half of the people of Cyprus lost properties as a result of inter-communal strife or military action between 1963 and 1974.[103] Therefore, the property issue has widespread economic, social, legal and political implications making it one of the most important aspects of the Cyprus problem intimately connected with "bi-zonality" and "respect for human rights".[104] Furthermore, since these two parameters have been interpreted differently by each side, the property issue has become even more difficult to solve.[105]

The GC side originally accepted that all displaced persons should have the right to return to their properties since this is a matter of respect for human rights. In other words, they consider bi-zonality is nothing more than having two distinct zones, each under the administration of the two communities and, taking into account full respect for human rights where this does not allow the exclusion of any former GC inhabitants from the TC zone.[106] On the other hand, the TC side has argued that the rights of the displaced should be restricted in so far as it is necessary to preserve the principle of bi-zonality, "preserving as much as possible the present pattern of settlement of the TC and GC populations".[107] In addition, according to the TC side's maximalist approach, property claims should be settled through a global exchange and compensation scheme.[108]

Although in order to reach an agreement the leaders of the two communities have adjusted and converged their positions on this, the emotional aspect associated with the property issue cannot be overcome so easily.[109] This also contributes to the

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[103] Report of the Secretary-General on his mission of good offices in Cyprus S/2003/398 (1 April 2003) para 107

[104] Gürel and Özersay, 'The Politics of Property' (n 88) vii

[105] Ibid 2; Ayla Gürel, Mete Hatay and Chrystalla Yakinthou 'Displacement in Cyprus, Consequences of Civil and Military Strife, An overview of events and perceptions, Report 5' (Prio 2012)

[106] Gürel and Özersay, 'Politics of Property' (n 88) 2

[107] 'Report of the Secretary-General on his Mission of Good Offices in Cyprus' S/2003/398 (1 April 2003) para 107; Sözen, 'The Cyprus Negotiations' n (23) 21

[108] Gürel and Özersay 'Politics of Property' (n 88) 11; The global exchange and compensation was put forward by Denktaş in February 1976 and presented at the fifth round of the Vienna Talks. This was the idea of exchanging all TC properties in the south for all GC properties in the north, with compensation to be paid, if necessary, for any difference in the value of the properties. It was stated in Chapter 2 that GC properties in the north were allocated to TCs including the titles in the following years; see Gürel and Özersay, 'Politics of Property' (n 88) 13-14. This approach can be considered as abandoned in light of the TC proposals since 2008; see Hatay and Bryant 'Negotiationg the Cyprus Problems' (n 92) 14.

[109] Gürel and Özersay, 'Politics of Property' (n 88) 2, 25

potential problems to be faced both before reaching a reunification agreement and during its implementation.[110]

The issue of "return" is also relevant and was taken up during the 2002–04 UN-sponsored inter-communal talks under "residency rights"; a broader concept concerning anyone from either community willing to establish residency in the other constituent state.[111] The UN-Secretary General states in this regard that:

> *[…] the Turkish Cypriot side wanted the constituent states to have the unfettered right to decide who could establish residency therein – this was their concept of 'bi-zonality'. The Greek Cypriots argued that [...] basic human rights and the principles of the acquis communautaire should allow any Cypriot citizen to settle anywhere on the island, any limitations being acceptable only in the first few years – for them 'bi-zonality' meant only two distinct zones administered by Greek Cypriots and Turkish Cypriots respectively.*[112]

In order to support the bi-zonal character of the State, the Annan Plan set out temporary limitations and followed a gradual approach for the establishment of residency by former inhabitants and other GCs in the Turkish Cypriot State.[113]

While proposing his scheme with respect to reinstatement of affected properties, Kofi Annan emphasised not only international developments since the Second World War, the ECtHR decisions recognizing the property rights of GC, the positions adopted by the UN and the international community in the former Yugoslavia, but also the fact that the events in Cyprus took place 30- 40 years ago and that the displaced persons, roughly half the TC population and a third of the GCs, have had to rebuild their lives and economies elsewhere during this time.[114] In this respect, he stated that the way out of the dilemmas presented by conflicting legitimate claims of owners and current users had to be based on compromise.[115] For this, Kofi Annan's scheme gave priority to claims of current users who had themselves been displaced, and allowed them to obtain title in return for exchanging

[110] Ibid
[111] Ibid 11
[112] 'Report of the Secretary General 2003' (n 107) para 98
[113] Article 3 of the Foundation Agreement; in his 2004 report the Secretary-General Kofi Annan expresses how the Plan was improved inspired by the Greek Cypriot and Turkish Cypriot concerns at paras 48-49, 51-52, 'Report of the Secretary-General on his mission of good offices in Cyprus' S/2004/437 (28 May 2004)
[114] 'Report of the Secretary General 2003' (n 107) para 108
[115] Ibid para 109

their property on the other side of the island. The Plan also gave to anyone who significantly improved a property the opportunity to obtain title on condition that he/she paid for the value of the property in its original state. For reinstatement of properties, the Plan provided for a range of incentives to encourage dispossessed owners to sell, lease or exchange their properties or seek compensation.[116]

The Plan's property provisions can be summarised as follows:

- An impartial, independent, administrative body comprising Cypriot members from each constituent state and non-Cypriot members not citizens of Cyprus, Greece, Turkey or the UK named the Cyprus Property Board consisting of the Claims Bureau, the Cyprus Housing Bureau and the Compensation Bureau would have been established.[117]
- A dispossessed owner would have been entitled to claim compensation for or reinstatement of his/her property.[118]
- Any claims for compensation for loss of use would have been managed by the relevant constituent states.[119]
- The Property Board would have been able to refer any parties on request to a list of real estate agents for advice about sale and/or exchange of lease transactions. The Board's involvement in this regard would only have been limited to provising information to the parties.[120]
- Through territorial adjustments, the TC constituent state's territory would have been reduced from 37% to approximately 29%. In areas subject to such adjustments, properties were to be reinstated to dispossessed owners.[121] It was said that this would allow 54% of GC displaced people to return to their original homes and properties which would have been under GC administration.[122] Of course, under this scheme, TCs living in these areas (a quarter of the population) would have had to be relocated.[123]

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[116] Ibid
[117] Article 2 of Annex VII: Treatment of Property Affected by Events Since 1963, Attachment 2: The Cyprus Property Board and Compensation Arrangements (of the Foundation Agreement); Main Article 10(4) of the Foundation Agreement
[118] Article 6 of Annex VII
[119] Article 20 of Annex VII
[120] Atrticle 16 Annex VII Attachment 2
[121] Article 10(2) of the Main Articles; Attachment 4 of Annex VII, Article 2
[122] International Crisis Group, 'Cyprus: Bridging the Property Divide' (n 38) 6; 'Report of the Secretary General 2003' (n 107) paras 113 and 118
[123] Gürel and Özersay, 'The Politics of Property' (n 88) 29-30

- In areas remaining outside areas of territorial adjustment, the owners of affected properties would have had the right to reinstatement or compensation. Dispossessed owners would have had the right to one-third of their property in value and land area, and to "full and effective compensation" for the remaining two-thirds.[124]
- Full reinstatement would have been possible with respect to a dwelling which the owners had built, or in which they had lived for at least ten years, and up to one *donum* (1337 meter squares) of adjacent land (even if this were more than one-third of the total value and area of their properties).[125]
- Dispossessed owners would have been able to choose any of their properties for reinstatement, except for those which had been exchanged by a current user or bought by significant improvement in accordance with the scheme defined in Article 1 of Attachment 1, Annex VII. A dispossessed owner whose property could not be reinstated, or who voluntarily deferred to a current user, would have had the right to an alternative property.[126]
- If they agreed to renounce their title to a property, current users could have applied for and received title of similar value and in the other constituent state from which they were dispossessed.[127]
- Persons who had made significant improvements to the properties could have applied and received title upon payment of the value of the property in its original state.[128]
- Occupants would have been expected to move out of any property when adequate alternative accommodation was provided.[129]
- A Compensation Fund would have been established in the Central Bank of Cyprus administered by the Compensation Bureau of the Cyprus Property Board. The federal government would have provided 100 million Cyprus pounds no later than 18 months upon the entry into force of the settlement with contributions from the international donors also available. The fund

[124] Main Article 10 (2) and (3) of the Foundation Agreement
[125] Main Article 10(3)(b); As stated by Kofi Annan, the Plan provided that most GCs would have some property reinstated in the TC State (usually their former home and one third of the land, though more (often all) for small landowners, and all for returnees to four Karpas villages and the Maronite village of Kormakiti); see 'Report of the Secretary General 2004' (n 122) para 48
[126] Main Article 10(3)(c)
[127] Main Article 10(3)(d)
[128] Main Article 10(3)(e)
[129] Main Article 10(3)(f)

would also have received all proceeds from the use or disposal of properties which would have been transferred to the Property Board.[130] The compensation fund would have been funded by the sale of properties by the Property Board provided no one obtained title to property without paying for it through exchange or in cash.[131]

- Compensation to be paid would have been in the form of guaranteed "compensation bonds" with a maturity of 25 years and "property appreciation certificates" linked to real property assets.[132]
- Compensation bonds and appreciation certificates at market value and via the Property Board could have been used for the purpose of purchasing property located in the relevant constituent state, for sale to any person or institution or to procure the payment of a deposit for purchase of alternative accommodation on the open market.[133]
- Properties which were not reinstated would have been transferred to the Property Board which would have had to dispose of them or lease them at market prices. This would have enabled the Board to generate revenue from the management, sale or use of such properties which would have been deposited in the Compensation Fund and any profits of the Board would have been distributed as dividends to the owners of appreciation certificates.[134]
- The whole relocation procedure would have been carried out by the Relocation Board.[135]
- The Plan provided for preferential loans, mortgage guarantee and mortgage subsidy systems for dispossessed owners, current users and owners of significant improvements to be administered by the Property Board and the scheme was to be guaranteed by the federal government supported by donors.[136]

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[130] Annex VII Attachment 2 Article 17 of the Foundation Agreement
[131] 'Report of the Secretary General 2003' (n 107) para 110
[132] Annex VII Attachment 2 Article 18 of the Foundation Agreement; see also 'Report of the Secretary-General on his Mission of Good Offices in Cyprus' (28 May 2004) S/2004/437 para 48; It should be stated that successful claimants would have first received claim receipts which could have been exchnaged for compensation bonds and appreciation certificates five years after entry into force of the Foundation Agreement, at Article 18(1) of Annex VII Attachment 2 of the Foundation Agreement
[133] Annex VII Attachment 2 Article 18(3) of the Foundation Agreement
[134] See Annex VII Attachment 2 Article 9 in general
[135] Annex VI of the Foundation Agreement Article 6
[136] Annex VII Attachment 3 Article 1

While this appears to be a fair, well-conceived and comprehensive scehme, Palley states that it omits details and conceals the real impact of the Plan's provisions on displaced persons and property owners.[137] She explains that this was the result of unlinking residency rights from the issue of reinstatement. According to her, this established double barriers to return for displaced people. In this respect, they would not only be subject to quotas under the residency ceilings to support "bi-zonality", but also to limitations for restitution.[138] As a result, although some would be able to return, they would not be reinstated in their homes, while some would be reinstated in their properties but would be excluded, as a result of the residency quotas, from the other constituent state.[139] Kofi Annan had in fact disagreed with arguments similar to this, stating in his 2003 report that, the dispute over the issue was based on unrealistic assumptions. According to him, these limitations would have little practical effect because fewer GCs than the percentages envisaged by the limitations would wish to establish residence in the TC constituent state.[140] In any case, because of the controversy, the Secretary General revised the later versions of the Plan (Annan III - V) to improve the provisions in line with concerns expressed by both sides of the conflict.[141]

5. Reactions to the Annan Plan Property Provisions

Although TCs said "Yes" to the Plan, they had doubts about its property scheme. As mentioned above, a large number of TCs would have had to be relocated as a result of reinstatement of properties or territorial adjustments. In addition, some TCs were opposed to the Plan because of its incompatibility with their long-lasting preferred goal of global exchange and compensation, and their concept of bi-zonality.[142] On the other hand, as mentioned earlier, for TCs the prospect of EU membership, the desire to be a subject of international law, and Turkey's support for the Plan had an important role regarding the outcome of the referendum.[143] They were however persuaded by the fact that the Plan restricted restitution and permanent settlement of

[137] Palley (n 85) 165
[138] Ibid 165 -167
[139] Ibid 167-168; see also Mallinson (n 79) 40-41 where he argues that the Plan violated the ECHR introducing restrictive quotas based on ethnicity and religion.
[140] 'Report of the Secretary General 2003' (n 107) para 100
[141] Ibid
[142] Gürel and Özersay, 'Politics of Property' (n 88) 30
[143] Ibid

persons from other community preserving the TC majority status in their own zone.[144]

GCs were concerned about the economic impact of the property regime of the Plan and believed it meant that they would have to pay a heavy price for the settlement of the Cyprus problem.[145] They argued that the property compensation methods and the system of payment by way of bonds were too complex[146] and they also doubted the GCs who wished to return to their properties in the adjusted areas, or to their properties in the TC constituent state would be able to do so.[147] The limited restitution scheme was another negative factor for GCs since this was against their long-lasting position of full-restitution. Many also believed that this was the "legitimation of ethnic cleansing of GCs from northern Cyprus",[148] that the scheme was in violation of international law, and the EU *acquis,* and that their stance on the issue of property was more in line with ECtHR judgments at that time.[149] However, according to the Report of the UN Secretary General, bi-zonality means that "each federated state would be administered by one community which would be guaranteed a clear majority of the population and of land ownership in its area."[150] From this point of view, the provisions of the Plan aimed to preserve this majority as a matter of principle. It can be said that, there was no political will to convince the majority of GCs to accept the Plan explaining these concepts in detail in public debates.

H. 2008-15: After the Annan Plan

Following the missed opportunity of the 2004 referendums, it took four years "to pick up the pieces" and restart negotiations in 2008 between pro-solution leader Talat and newly elected President Christofias, Secretary General of the leftist party

[144] Ibid
[145] Palley (n 85) 231-232; Gürel and Özersay, 'Politics of Property' (n 88) 31. For arguments against this see Stelios Platis, Stelios Orphanides and Fiona Mullen 'The Property Regime in a Cyprus Settlement: A Reassessment of the Solution Proposed Under the Annan Plan, Given the Performance of the Property Markets in Cyprus, 2003–2006' (Prio Report 2/2006, 2006)
[146] International Crisis Group, 'Cyprus: Bridging the Property Divide' (n 38) 6
[147] Palley (n 85) 226
[148] Ibid 228-229
[149] Gürel and Özersay, 'Politics of Property' (n 88) 31; see also International Crisis Group, 'Cyprus: Bridging the Property Divide' (n 38) 7
[150] 'Report of the Secretary General on His Mission of Good Offices in Cyprus' S/23780 (3 April 1992) para 20

AKEL.[151] At that time, it looked as if "a dark age" had come to an end[152] with a new terminology in the negotiations of "Cypriot-led, Cypriot-owned solution".[153] The two representatives initially established six working groups to pave the way for high-level negotiations,[154] and seven technical committees to deal with the daily problems arising from the Cyprus problem and to increase trust and cooperation between the communities.[155]

Except for the two most sensitive issues, "territory" and "security and guarantees", convergence increased between the leaders.[156] Since most of the decisions of the technical committees had never been endorsed by the two leaders and the cooperation activities had never been implemented, the working groups were mostly dissolved towards the end of September 2008.[157] As indicated by Sözen, the negotiations returned to the traditional "track-one level process" at "a snail's pace".[158] In other words, stalemate persisted between the two leaders,[159] who had local political concerns wishing to preserve the support of their respective communities. Furthermore, the talks also stalled a few times due to both communities' respective election seasons.[160]

In 2013, Anastasiades became the new President of the RoC. He promised to work for a settlement with a better plan than Annan V.[161] At that time, the President of the TRNC was Eroğlu; a right-wing politician. On 11 February 2014, the two leaders made a joint declaration stating that the talks revolved around a loose federation with sovereignty emanating from the two communities rather than the people of Cyprus as a whole.[162]

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[151] Ahmet Sözen, 'A Common Vision for a Way out of the Cyprus Conundrum' (2017) 15 (4) Turkish Policy Quarterly 27, 29
[152] Helena Smith, 'The Peculiar Solution, Observations on Cyprus' *News Statesman* (28 February 2008) <http://www.newstatesman.com/society/2008/02/cyprus-christofias-party> accessed 31 October 2018
[153] Michalis S Michael, ''Cypriot-led, Cypriot-owned': Cyprus Talks Revisited' Australian Journal of International Affairs 67 (4) (2013) 526, 531
[154] Ahmet Sözen, 'A Common Vision' (n 151) 30. The six groups were 'Governance and Power Sharing', 'Economic Affairs', European Union Affairs', 'Property', 'Territory' and 'Security and Guarantees'
[155] Ibid 30
[156] Ibid
[157] Ibid
[158] Ibid
[159] Theophanous (n 55) 45
[160] Sözen, 'A Common Vision' (n 151) 30
[161] Theophanous (n 55) 46
[162] Ibid

I. 2015-Present: Hopes Rise Again

When Akıncı was elected in April 2015 as the new President of the TRNC, expectations were high again since, during the 2004 Annan Plan referendums, he and Anastasiades were each pro-solution having expressed their intention to implement various CBMs such as uniting the two electricity grids and having a mobile roaming agreement to build trust.[163] A positive atmosphere also with the two appearing together at social events in both parts of the island, increased optimisim.[164]

The leaders reached agreement on a number of substantive issues, yet there was no real progress on CBMs[165] - the most important issues for reaching a settlement and upon matters impacting on people's daily lives. The two leaders also set up three new technical committees dealing with daily problems to increase cooperation and trust between the two communities.[166] Their work, especially those on health matters, environment, humanitarian matters, crossing points and telecommunications, has been subject to criticism in the press.[167] On the other hand, notably, the Technical Committee on Education launched a programme providing opportunities for children from both sides to interact, and for teachers, to acquire and practice techniques for peace education.[168] The Technical Committee on Cultural Heritage completed three major architectural restoration projects providing opportunities for GCs and Maronites to visit and worship at those sites. However, although other committees continued to meet, their achievements have been limited.[169] Participation of a wide range of elites as members of the committees has

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[163] Ibid; Sözen, 'A Common Vision' (n 151) 30

[164] See for example 'Rival Leaders of Cyprus Drink Zivania in Divided Capital' *Hürriyet Daily News* (23 May 2015) < http://www.hurriyetdailynews.com/rival-leaders-of-cyprus-drink-zivania-in-divided-capital.aspx?pageID=238&nID=82852&NewsCatID=351> accessed 1 September 2017; see also Michele Cambas 'Cyprus Peace Talks Resume with Confidence Building Measures', *Reuters* (15 May 2015) <http://www.reuters.com/article/us-cyprus-talks/cyprus-peace-talks-resume-with-confidence-building-measures-idUSKBN0O017T20150515> accessed 1 September 2017

[165] Sözen, 'A Common Vision' (n 151) 31

[166] 12 technical committees have been established by the leaders since 2008 to work on CBMs to improve daily lives of Cypriots, as well as encouraging and facilitating greater interaction. See also 'Report of the Secretray-General on the United Nations Operations in Cyprus' S/2017/586 (10 July 2017) para 21. The Committes are on Crime and Criminal Matters, Economic and Commercial Matters, Cultural Heritage, Culture, Crisis Management, Humanitarian Matters, Health Matters, Education, Gender Equality Matters, Environment, Telecomunications and Radio Frequency-Broadcasting, Crossing Points

[167] İsmail Volkan, 'İki toplumlu teknik, tek toplumlu tıkanık' [Two communities-technical, Single community – interrupted] *Kıbrıs Gazetesi* (10 March 2017) <http://www.kibrisgazetesi.com/kibris/iki-toplumlu-teknik-tek-toplumlu-tikanik/14185> accessed 30 October 2018

[168] 'Report of the Secretray-General on the United Nations Operations 2017' (n 166) para 21

[169] Ibid para 22

also played an important role in including people other than politicians in the process. However, other factors has limited the expected impact.

The talks between Anastasiades and Akıncı built upon the existing agreements; they managed to produce a greater level of agreement than in the past; they agreed on most of the issues under "governance and power-sharing" apart from the issue of rotating presidency and effective participation in decision-making by the two communities at federal level; agreement on economic issues has almost been completed; and the only remaining issue with respect to EU affairs, to prevent the agreement from being challenged at the international courts, has been to find a formula to ensure the Cyprus settlement is part of the EU *acquis*.[170] The two leaders faced one particularly challenging issue with respect to "property"; "the emotional attachment" of displaced persons to what they had lost.[171] Since it would enable the determination of the scope of restitution, this was particularly important as Akıncı emphasised when the parties met in Mont Pelerin, Switzerland in November 2016. Although the atmosphere was positive, the outcome was a great disappointment. For the first time, the parties had started to engage seriously with "territory", and, as Akıncı stressed, to produce a provisional "map". The plan was to set a date for the international conference with the participation of Greece, Turkey and the UK as guarantor powers particularly regarding security.

However, according to Akıncı, the Greek Cypriot side insisted on negotiating the number of displaced persons to return. Furthermore, he noted that Greece proposed the withdrawal of all troops from the island as a pre-condition for a five-party conference and insisted upon abolishing the current guarantee and security system. Akıncı stated that the GC side wanted to fulfil its demands on these issues without any concessions on rotating presidency and effective participation of TCs in decision-making, issues reflecting political equality which have always been vital for Turkish Cypriots. The GCs wanted "ambiguity" to be preserved for the return of the displaced with emotional attachment to properties remaining in the TC constituent state with no clarification of relevant criteria, while the TCs wanted clarity. Akıncı indicated that the numbers put forward by the GCs were not reasonable and did not

[170] Sözen, 'A Common Vision' (n 151) 31
[171] Ibid

take into account the realities on the ground[172] while Anastasiades accused the Turkish side of not showing sufficient flexibility during the talks. He added that, if no agreement was reached on territory, GCs would find themselves in a multi-party conference where they would be pressured to agree to Turkish proposals regarding guarantees in exchange for concessions on territorial adjustments.[173] This blame game further eroded trust between the communities.

When the two leaders met again in Geneva in January 2017, they presented their maps under the "territory" dossier in line with the percentages agreed previously, the first time the two sides submitted and exchanged such details. It was also the first time that the relevant parties to the Treaty of Guarantee and Treaty of Alliance (the three guarantors) came together to discuss security and guarantees.[174]

The latest collapse of negotiations happened in Crans Montana, Switzerland with the participation of guarantor powers where the parties convened at the end of June 2017 for an exhausting ten-day conference where the Secretary General presented his framework for negotiating security and guarantees, and effective participation of TCs in decision-making, territory, property and equivalent treatment of permanent resident Turkish nationals. While the parties were expected to adjust their positions and put forward their proposals in line with this framework,[175] the outcome was no different from that of the past. The UN Secretary General announced the failure in a three-minute speech wishing the best for all Cypriots.[176]

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[172] 'Press Conference by President Akinci on his return from Mont Pelerin' *In Cyprus* (22 November 2016) <http://in-cyprus.com/akinci-brief-press-on-return-from-mont-pelerin/> accessed 23 November 2016
<http://cyprus-mail.com/2016/11/23/anastasiades-says-not-want-play-blame-game/> accessed 30 October 2018

[173] Evie Andreou 'Anastasiades says he does not want to play blame game, ready to continue negotiations' *Cyprus Mail* (23 November 2016) <http://cyprus-mail.com/2016/11/23/anastasiades-says-not-want-play-blame-game/> accessed 30 October 2018

[174] Sözen, 'A Common Vision' (n 151) 31-32; Rasıh Reşat, Canan Onurer, Ulaş Barış 'Kıbrıs sorununda tarihi eşik aşıldı "Haritalar kasada, garantörler artık masada"' *Kıbrıs Postası* (12 Ocak 2017) <http://www.kibrispostasi.com/kibris-sorununda-tarihi-esik-asildi!-haritalar-kasada-garant> accessed 3 February 2017; TC side proposed that the TC constituent state would have 29.2% of the land, and the GC side proposed that the TC constituent state would have 28.2% of the land.

[175] 'Conference on Cyprus reconvenes in Crans-Montana', *UN* (28 June 2017) <http://www.uncyprustalks.org/conference-on-cyprus-reconvenes-in-crans-montana/> accessed 3 August 2017; Remarks by Secretary-General António Guterres following his meeting with H.E. Mr. Nicos Anastasiades, Greek Cypriot leader; and H.E. Mr. Mustafa Akıncı, Turkish Cypriot leader, *UN* (4 June 2017) <https://www.un.org/sg/en/content/sg/statement/2017-06-04/remarks-secretary-general-ant%C3%B3nio-guterres-following-his-meeting-he> accessed 3 August 2017; Jean Christou 'The Guterres Package' *Cyprus Mail* 5 July 2017 <https://cyprus-mail.com/2017/07/05/details-framework-paper-issued-un-secretary-general/> accessed 3 August 2017

[176] UN chief 'deeply sorry' as Cyprus talks conclude without agreement 7 July 2017 <http://www.un.org/apps/news/story.asp?NewsID=57133#.Wavyf_NJbIU> accessed 3 August 2017

Following Crans Montana, the words of Espen Barth Eide, Special Advisor on Cyprus, were remarkable when he stated that:

> *The climate, the tone, the way people spoke about each other and to each other didn't sound like people that were about to unify their homeland.*[177]

It was obvious that there was no trust between the parties and the blame game was in play again with the main issue concerning the presence of troops on the island and unilateral intervention rights insisted upon by Turkey. Immediately after the collapse of the conference, the Turkish Foreign Minister Çavuşoğlu blamed the Greek Cypriot side and Athens insisting on the withdrawal of all troops from day one of the settlement agreement (zero troops-zero guarantees).[178] On the other hand, Anastasiades blamed the Turkish side for insisting upon maintaining the Treaty of Guarantee and keeping Turkish troops on the island.[179] Independent sources and diplomats acknowledged that Turkey did its best with its offers regarding security and guarantees, but the GC side insisted on zero troops-zero guarantees.[180] It has also been suggested that towards the end of 2016, as a result of political concerns indicated by the polls that voting in favour of a new plan by the GC side was far from certain and that in turn Anastasiades became a "rejectionist" with respect to the idea of reunification of Cyprus. Furthermore, it has been claimed that a great majority of GCs have been consistently bombarded by misinformation supported by numerous mass communication media and endorsed with most GC political parties.[181] Some have argued that a solution would not improve the *status quo* for the GCs given the

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[177] 'Eide: they didn't sound like people that were about to unify their homeland' *Cyprus Mail* 22 July 2017 <http://cyprus-mail.com/2017/07/22/eidethe-inability-get-final-outcome-cyprus-talks-prevented-solution/> accessed 3 August 2017

[178] Helena Smith 'Cyprus reunification talks collapse amid angry scenes UN chief António Guterres says he is 'very sorry' as he announces no agreement reached in the early hours of the morning' *The Guardian* 7 July 2017 <https://www.theguardian.com/world/2017/jul/07/cyprus-reunification-talks-collapse-amid-angry-scenes> accessed 30 October 2018

[179] 'Anastasiades Blew 'Such a Good Deal'' *Cyprus Mail* (8 July 2017) <http://cyprusmail.com/2017/07/08/anastasiades-blew-good-deal/> accessed on 30 October 2018

[180] Esra Aygın, 'A Failure to Reach a Deal In Switzerland Could Scar Generations' *In Cyprus* (15 July 2017 <http://www.newsincyprus.com/news/84565/a-failure-to-reach-a-deal-in-switzerland-could-scar-generations> accessed 30 October 2018

[181] See Christos Panayiotides 'The Partition of Cyprus is In Sight' *Cyprus Mail* (8 August 2017) <http://cyprus-mail.com/2017/08/08/partition-cyprus-sight/> accessed 30 October 2018; see also Vatan 'Mehmet Anastaisades Crans Montana Sonrası Seçim Kampanyasında Büyük Sıkıntıya Girdi' *Kıbrıs Postası* (10 Temmuz 2017) where Niyazi Kızılıyürek states that the polls show that 70% of the GC are against the concept of 'rotating presidency' which was an issue at the negotiating table <http://www.kibrispostasi.com/anastasiadis-crans-montana-sonrasi-secim-kampanyasinda-buyuk> accessed 30 October 2018

belief that Turkey's aim was to replace the RoC with a new state on which it would have political influence.[182]

The choice to be made in Crans Montana was between 40,000 Turkish troops in 146 locations in a divided country, or 650 troops in one location for a certain period of time in a unified federal state.[183] In other words, as mentioned above, the short-term political agendas of the GCs won in Crans Montana. But, the same applies to the TCs; the choice was between a symbolic rotating presidency and a united Cyprus as a member of the EU. The idea of permanent partition as an alternative deal had also already started to find a place on the agenda of some circles.[184]

J.Can the Problem be Solved?

1. In General

From the beginning of the intercommunal negotiations, the constitutional aspects of the problem and the issue of security/guarantees have been at the fore. Despite the parties being on an "equal footing" as indicated by the UN resolutions, it seems that the GC side has not, in fact, accepted this since they are already the sole representative of the RoC recognised by the international community.[185] Apart from this, each side has maintained that their point of view is in line with the High-Level Agreements on the main parameters.[186] The parties would not step back from their original positions if this would mean renouncing their "sovereignty". In this regard, as mentioned previously, for the majority of the GC side bi-zonality would imply accepting partition and this is unacceptable to them. This is connected with the distinct positions of the two sides regarding the form of federation; weak or strong.[187] In addition, for "security" reasons, the TC side would not tolerate a "strong" federal government.[188] Considering that the principle of equality and equal representation is fundamental for federalism,[189] it can be said that the parties should take steps to

[182] Theophanous (n 55) 47
[183] Esra Aygın 'A Failure to Reach a Deal' (n 180)
[184] 'Crans Montana Aftermath', *In Cyprus* (15 July 2017) where Turkish Minister of Foreign Affairs Çavuşoğlı stated that there was no use of insisting on the same parameters following the collapse of the negotiations at Crans Montana, Switzerland. <http://www.newsincyprus.com/news/84529/crans-montana-aftermath> accessed 30 October 2018
[185] See Necatigil (n 20) 146
[186] Ibid 147
[187] See Necatigil (n 20) 148-150
[188] Ibid 150
[189] Ibid 151

understand and accept the essence of a federal state. As Kızılyürek highlights, rejecting "the most possible" in favour of asserting "rightfulness" has resulted in many failures in the political arena so far.[190]

Since the parties have perceived the steps to be taken towards building trust as "concessions", to a great extent, the lack of progress regarding CBM's is also related to the issue of "sovereignty".[191]

Özersay notes that almost all alternatives for a solution within the UN framework have been exhausted as has a variety of leaders, diplomatic methods and techniques.[192] Yet there is no result. According to him, a new platform for negotiations and an alternative model is needed - a plan B.[193] For example, he asserts, if the GCs are willing to maintain a unitary state, they could continue to do so as they have since 1963, and while TCs would have their own independent state, they might be ready to show extra flexibility in respect of territorial adjustments and restitution of properties. Furthermore, Özersay is of the opinion that a special agreement might be made regarding the relationship between Turkey and TCs to address GC fears related to Turkey.[194] The model would also provide for the Turkish Cypriot state to be a member of the UN where unification with another state might be prohibited by the UN Security Council.[195] He also proposes that, in this case, it would be easier to handle other issues such as the number of GCs to settle in the TC state, and to enjoy the four freedoms of the EU within the territory of an independent TC state.[196] The essence of this model is Özersay's belief that "both communities will be able to get more than they formally expect from a settlement based on the existing UN basis".[197]

Tzimitras and Hatay advocate "linkage politics" according to which cooperation between the communities should be expanded through increased

[190] Niyazi Kızılyürek, 'En iyi çözüm mümküm olan çözümdür' [The best solution is the one that is feasible] *Yenidüzen* (2 July 2017) <http://www.yeniduzen.com/en-iyi-cozum-en-mumkun-olan-cozumdur-10898yy.htm> accessed 30 October 2018
[191] See, for example, Evie Andreou 'Confidence building measures must reinforce negotiations' *Cyprus Mail* (1 April 2017) <http://cyprus-mail.com/2017/04/01/confidence-building-measures-must-reinforce-negotiations/> accessed 30 October 2018
[192] Kudret Özersay, 'Exhaustion and Time for Change' (2012) 24 (4) Peace Review 406, 408
[193] Ibid 413
[194] Ibid 411
[195] Ibid 411-2
[196] Ibid 412
[197] Ibid

interaction in fields such as education, tourism and energy.[198] According to these authors this could be done by way of new initiatives going beyond CBMs to create new interdependencies on the island.[199] It has also been suggested that steps could be taken to resettle the former inhabitants to fenced-off Varosha and to compensate displaced persons on both sides of the island whose properties have been irreversibly developed for public purposes.[200] Hatay is also of the opinion that the concept of "nothing is agreed until everything is agreed", has led to a deadlock and that it should be abandoned in favour of a piecemeal approach instead.[201] Hatay and Bryant state that piecemeal solutions might contribute to "building confidence along the way".[202] More recently, Sözen and Pantelides proposed a transitional period to enable the two communities to develop the necessary culture and experience for cooperation; a step by step approach to federation instead of an instant federation following the referendums. Accordingly, there will be an agreed roadmap which will specify steps such as troop withdrawals, resettlement of Varosha, economic integration and property, and the return of the displaced. In this scenario, integration in common federal structures would be the last step rather than the first.[203]

Some indicators with respect to the two sides' understandings of issues and political concerns are addressed below.

2. The Cyprus Problem: A Comfortable Conflict?

As Galtung puts forward, negative peace "is the absence of violence, absence of war", and positive peace "is the integration of human society".[204] Although Cyprus is a "protracted conflict case",[205] it has not experienced any violence since 1974 except from rare shootings across the buffer zone in the 1970s and 1980s and the killings of

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[198] See Harry Tzimitras and Mete Hatay, 'The Need for realism: Solving the Cyprus Problem Through Linkage Politics' (The Center on the United States and Europe at Brookings- Turkey Project Policy Paper October 2016 Number 9)

[199] Ibid

[200] Hatay and Bryant, 'Negotiating the Cyprus Problem(s)' (n 92) 22

[201] Rafet Uçkan 'Kıbrıs Sorununda Yeni Yöntem Arayışı' *Birikim Dergisi* (30 July 2017) <http://www.birikimdergisi.com/guncel-yazilar/8437/kibris-sorununda-yeni-yontem-arayisi-2-mete-hatay-la-soylesi#.W6VDq-gzY2y> accessed 31 October 2018

[202] Hatay and Bryant, 'Negotiating the Cyprus Problem(s)' (n 92) 22

[203] Andreas Paraschos, 'Swiss governance model instead of bizonal federation Interview with Leonidas Pantelides and Ahmet Sözen' *K News Kathimerini* (18 February 2019) <http://knews.kathimerini.com.cy/en/news/pantelides-sozen%E2%80%8F-swiss-governance-model-instead-of-bizonal-federation> accessed 19 February 2019

[204] Johan Galtung 'An Editorial ' (1964) 1 (1) Journal of Peace Research 1, 2

[205] This was addressed in Chapter 1

two GC protesters in 1996.[206] Following the opening of crossing points in April 2003, numerous incidents have also been reported such as attacks by GC extremists on TC vehicles visiting south, an attack against former President of the TRNC Mehmet Ali Talat at an event on the Cyprus problem in Limassol and the stabbing of a TC musician in a festival held in Larnaca in 2010.[207]

As Adamides and Constantinou claim, the post-Cold War traditional view of peacebuilding may not be appropriate for Cyprus since many aspects which liberal peace building activities aim to promote are already in place on the island such as liberal democracy and market economics.[208] They argue that, as a result of the high standard of living on both sides of the island,[209] the democratic environment, and the EU accession of the RoC, there is already a form of liberal peace in Cyprus even in the absence of a settlement agreement.[210] According to them, these factors have created a "comfortable conflict" that can be considered "peace" both for locals and outsiders.[211] According to most GCs, "true" peace can only exist with the withdrawal of Turkish troops and the abandonment of the Treaty of Guarantee.[212] Other political concerns have also been outlined with respect to the structure of a new state, in particular in the sub-section on negotiations between Akıncı and Anastasiades. Of course, these arguments do not mean that there are no pro-solution groups in both sides of the island. It should be added that, the system established in north Cyprus is not sustainable since it depends on exploitation of abandoned GC properties and nepotism without any concern for the future.[213] In addition, as a result of the circumstances of being a *de facto* state recognised only by Turkey, the TCs are

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[206] Constantinos Adamides and Costas M Constantinou 'Comfortable Conflict and (Il)liberal Peace in Oliver P Richmond and Audra Mitchell (eds) *Cyprus in Hybrid Forms of Peace: From Everyday Agency to Post-Liberalism* (Palgrave Macmillan 2012) 242, 242

[207] Agnieszka Rakoczy, 'Government urged to act over attacks on Turkish Cypriots', *Cyprus Mail* (12 February 2017) <http://cyprus-mail.com/2017/02/12/government-urged-act-attacks-turkish-cypriots/> accessed 23 October 2017; Turkish Cypriot Cars Vandalised on Troodos, *In Cyprus* (7 February 2017) <http://in-cyprus.com/turkish-cypriot-cars-vandalised-on-troodos/>; Statement by Stefanos Stefanou, AKEL C.C. Spokesperson, Akel Demands Government Take Measures Against attacks on Turkish Cypriots, (9 August 2016) <https://www.akel.org.cy/en/2016/08/23/akel-demands-government-take-measures-against-attacks-on-turkish-cypriots/#.We4uuluCzIU>; Evie Andreou, 'Justice must be seen done', *Cyprus Mail* (7 August 2017) <http://cyprus-mail.com/2016/08/07/justice-must-seen-done/> accessed 23 October 2017; 'Who is ELAM?', (TRNC Public Information Office, 24 May 2016) <http://pio.mfa.gov.ct.tr/en/who-is-elam/> accessed 23 October 2017

[208] Adamides and Constantinou (n 206) 5

[209] Although the authors refer to the "high standard of living on both sides", the standard of living in the Greek side is considerably better.

[210] Adamides and Constantinou (n 206) 5

[211] Ibid

[212] Ibid 6

[213] Bryant 'Living with Liminality' (n 92)139

consumers but not producers, receivers of aid from Turkey but not participants in a wider democratic process.[214] Recent surveys show that the majority believes the *status quo* is unsustainable and desires a solution.[215] However, considering the course of negotiations as explained above, it seems the *status quo* is accepted as it stands. Furthermore, it can be argued that short-term political gains are at the fore for some.

Elites have always played a crucial role in Cyprus both with respect to how they controlled the conflict in the past and in the determination of its future.[216] As argued by Lacher and Kaymak a considerable majority of the political elite in the north has an interest in maintaining the *status quo*. As they put it "Political connections allow a socio-economic elite to enjoy relative wealth and privilege, of which landed property is the single most important source".[217] GC property left in the north had been such a financial source in this respect. The situation was also reflected at the electoral level where pro-secession parties have generally received over 60 per cent of the popular vote since 1974.[218] The change only occured in 2003 during the Annan Plan period, which was, as Lacher and Kaymak state as a result of "the exhaustion of the distributive capacities of the North Cypriot state, and its diminishing ability to integrate society beyond the elite groups mentioned … that is at the heart of this transformation".[219] In the south, as a result of strong economic growth since partition, and accession to the EU, there has been little pressure on elites to find a solution.[220] Unlike the north, no price was paid for failure to do so. Furthermore, since the RoC enjoys international legitimacy, its elites also enjoy a high degree of public loyalty,[221] also a hindrance to solution-oriented cooperation. Papadopoulos' call for Greek Cypriot rejection of the Annan Plan in 2004 is an example of such behaviour also considered further below.[222]

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[214] Ibid
[215] Report of the Secretary General United Nations Operations in Cyprus S/2019/562 (10 July 2019), 12, Report of the Secretary General United on his Mission on Good Offices in Cyprus S/2019/322 (16 April 2019), 2
[216] Yakinthou, *Political Settlements in Divided Societies* (n 6) 121
[217] Hannes Lacher and Erol Kaymak, 'Transforming Identities: Beyond the Politics of Non-Settlement in North Cyprus' (2005) 10 (2) Mediterranean Politics 147, 153
[218] Ibid 154
[219] Ibid 155
[220] Yakinthou, *Political Settlements in Divided Societies* (n 6) 103)
[221] Ibid
[222] Ibid

3. Prevailing Ethno-centric Nationalisms and Political Manipulation

According to Anastasiou, nationalism has considerably eroded over the years with respect to both communities. However, he adds that nationalist political leaders and their impact on politics and public culture has nevertheless prevailed on both sides of the island at the most crucial historical junctures.[223] In other words, even when the conditions were in favour of a settlement, nationalism proved to be the main obstacle to success.[224] The UN-led Hague talks of March 2003 and the Annan Plan Referendums of April 2004 were historical landmarks and significant attempts to find an answer to the question of what accounts for the failure.[225] According to a study undertaken just before the Annan Plan referendums in March 2004, it was predicted that there was a high probability for agreement on the UN peace plan in particular on the issue of property.[226] But, the result of the April 2004 referendum was highly different. In a study conducted in May 2004, it was discovered that there were considerable divergences on the issues of territory, settlement and property rights.[227] More surprisingly, a survey conducted between September 2004 and January 2005 showed that 67% of each community favoured a federal settlement on the basis of the Annan Plan.[228] It should also be added that, although there was strong support by the Turkish government and the TCs in favour of the Plan, this did not prevent Denktaş from attempting to defeat it.[229] But unlike Denktaş's campaign, Papadopoulos' rejectionist point of view had a considerable influence in south. In his campaign, Papadopoulos invoked old GC nationalist memories and sentiments of reactivating their sense of victimization and injustice, and sympathy for reactionary nationalist culture emphasizing on the "enemy".[230] The Plan was also reflected as a conspiracy by foreigners in favour of Turkey's interests. Although the Plan envisaged the withdrawal of a considerable number of Turkish troops, the rejectionist camp chose to emphasise that it allowed for the continuing presence of Turkish troops, and it was suggested that it legitimised partition and the occupation of Cyprus.[231] The intense

[223] Harry Anastasiou 'Nationalism as a Deterrent to Peace and Interethnic Democracy: The Failure of Nationalist Leadership from the Hague Talks to the Cyprus Referendum' (2007) 8 International Studies Perspectives 190, 191
[224] Ibid
[225] Ibid
[226] Ibid 197
[227] Ibid
[228] Ibid
[229] Ibid 197-198
[230] Ibid199
[231] Ibid 199-200; see also Mallinson (n 79) 42

emotions and anxiety among the GC community were exacerbated by the exaggerated speech Papadopolous made on TV just before the referendum resulting in the "No" vote.[232] In this respect, Anastasiou views the failure as a lack of leadership. It can be said that the underlying issue behind the approach taken during the latest phase of negotiations has again been those fears which led to an impasse, especially with regard to the issue of security. On the other hand, ethnocentric nationalist approaches cannot be deemed to be the sole hindrance to the realisation of a united Cyprus since other factors explained in this section have an impact on the issue and cannot be separated from each other.

4. Federalism Considered as a Concession/Compromise

It was stated above that the impact of nationalist political leaders on politics and public opinion prevailed on both sides of the island at the most crucial historical junctures. As a result of this and the historical and political circumstances, state-building has not been the key issue for either of the communities in Cyprus.[233] The RoC was the result of a compromise since the national ambitions of *enosis* (union with Greece) and *taksim* (partition and union with Turkey) could not both be realised.[234] However, these two aims had powerfully been on the minds of the two communities reflecting a lack of common political vision.[235] Following the collapse of the Republic in 1963, and the intervention of Turkey in 1974, antagonism between the two major communities deepened further.[236] Thus, Kızılyürek states that the question now is "how to achieve political attachment to a common state" that will be based on a compromise between two separate political communities which minimizes nationalist antagonisms.[237] Although it is not possible to disregard the fact that there are different identities in Cyprus, a structure, according to which the two can live together under one roof without fear and with political equality, is necessary.[238] As stated previously in this Chapter, a federal arrangement is a partnership reflecting power-sharing based on a mutual recognition by each partner

[232] See Anastasiou (n 223) 199
[233] Niyazi Kızılyürek 'Historical Grounds of a Federal State in Cyprus' in Ahmet Sözen (ed*) The Cyprus Conflict: Looking Ahead* (Cyprus Policy Center 2004) 95
[234] Ibid 96
[235] Ibid
[236] Ibid 97
[237] Ibid 98
[238] Ibid

of the integrity of the other.[239] Furthermore, it is a form of political accommodation which enables national cultures to be preserved not disregarded.[240] In federations, the liberties of communities are emphasized and some of their powers are transferred to the common polity.[241] Accordingly, Kızılyürek notes that federalism is the appropriate system for Cyprus.[242] However, although it was accepted as a parameter by Makarios and Kyprianou as part of the 1977-79 High Level Agreements, a federation, in particular a bi-zonal one, has never been a goal for the GCs. Theophanous states that, both Makarios and Kyprianou had considered it a price worth paying to achieve reunification.[243] It was stated previously that the TCs conception of a bi-zonal federation excluded the establishment of a strong central government. However, the kind of federalism needed in Cyprus is one in which each community makes sacrifices for the other, and there is room for cooperation and achieving consensus. Otherwise, a federal state would not be stable.[244] In other words, federalism is about a common political culture which encompasses the protection of group rights as well as individual interests.[245] No federal system can succeed where its citizens do not think in positive federal terms.[246] Kızılyürek notes that in the post-Annan period, particularly the GCs having joined the EU seemed to prefer to preserve the *status quo*.[247] He also states that:

> *Indeed a federalist approach to society and state based on respect and recognition of diversity and on the political will for a political union should not be seen as a compromise only which would help to solve the Cyprus problem but also a necessary reorganization in order to accommodate and integrate the "neo-Cypriot Communities" which came from different parts of the world and live in Cyprus and they will continue to live here.*[248]

[239] Daniel J Elazar, *Exploring Federalism* (The University of Alabama Press, 1987) 5-6
[240] Gregory Jusdanis, *The Necessary Nation* (Princeton University Press 2001) 223
[241] Elazar (n 239) 93
[242] Kızılyürek, 'Historical Grounds' (n 233) 98
[243] Theophanous (n 55) 230
[244] See Kızılyürek, 'Historical Grounds' (n 233) 99-100
[245] Ibid 100
[246] Elazar (n 239) 192
[247] Kızılyürek, 'Historical Grounds' (n 233) 102
[248] Ibid 101

It is obvious that there should be political will and leadership for this to succeed. Such a political will is not solely about institutional structures that, as this Chapter has already demonstrated, have been the subject of negotiations since 1963. Reluctance of political elites to end division is among the obstacles lying in the path of a stable form of federalism in Cyprus.

5. Is a Cypriot-owned Solution Possible?

It was stated above that one of the arguments raised by the rejectionist campaign was the claim that since the international community made a significant contribution to the establishment of the RoC, the Annan Plan was a conspiracy of foreigners to favour Turkey's interests.[249] As also already noted, most international efforts were hostage to negative perceptions on the part of the GCs and TCs and to the fact that the elites on both sides were unable to think outside the box.[250] As a result, it is vital that a solution should be Cypriot-owned. However, whether this is possible is another matter.

Following the unsuccessful UN involvement in 2004, Kofi Annan stated that responsibility for finding a solution lay "first and foremost with the Cypriots themselves".[251] By the end of 2010, this became the guiding principle of the talks with the new UN Secretary General Ban Ki-moon stating that the leaders of the two communities should take the responsibility for the course of the negotiations and that they "must propel the process forward and defend it against those who would seek to derail it."[252] Again, following Crans Montana, Secretary General Antonio Guterres stated that the UN remains available to the parties should they request talks.[253] However, although the issue of "Cypriot-owned solution" is analysed separately here, it is intimately connected with tother factors. The lifting of restrictions on movement between north and south in 2003 has provided opportunities for the two

[249] Anastasiou (n 223) 199-200; see also Mallinson (n 79) 42; see also Yakinthou, *Political Settlements in Divided Societies* (n 6) 57
[250] Adamides and Constantinou (n 206) 13
[251] Report of the Secretary General on the United Nations Operation in Cyprus S/2007/328 (4 June 2007) para 27
[252] Report of the Secretary General on the United Nations Operation in Cyprus S/2010/744 (28 November 2010) para 27
[253] 'Guterres yet to Decide on Next Step for UN role in Cyprus', *Cyprus Mail* (8 July 2017) <http://cyprus-mail.com/2017/07/08/guturres-yet-decide-next-step-un-role-cyprus/> accessed 30 October 2018

communities to interact, communicate and build relationships.[254] According to the results of research conducted between September 2005 and July 2006, the more the interaction takes place across the dividing line, the more oriented the climate becomes towards reconciliation.[255] However, it seems that the prospect of reconciliation remains remote.[256] Another report about displaced persons states that the more time passes without a political solution, the more the problem becomes entrenched.[257] This was also an issue noted by the ECtHR with respect to property rights as shall be examined in Chapter 3. As indicated in Chapter 1, a significant shortcoming of transitional justice is neglecting the causes of injustice.[258] It was also noted that transitional justice practice is said to be dominated by international networks rather than local movements; i.e. the agenda is externally driven and those most affected by violations have little or no opportunity to participate and to impact on the process.[259] Consultation with affected people is crucial,[260] as is the integration of unofficial local initiatives, social and economic policies for social justice and radical approaches impacting communities directly.[261] None of this is visible in the negotiations about the Cyprus Problem.

In May 2017, an initiative named "Unite Cyprus Now" gathered everyday in the UN Buffer Zone, Ledra Street, Nicosia calling the leaders to come to the negotiation table. The group defines itself as "a grass roots, independent, self-funded initiative of Cypriots from all communities promoting actions in support of peace and the reunification of the island through a negotiated settlement of the Cyprus

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[254] Michael (n 153) 528

[255] Ari Sitas, Dilet Latif and Natasa Loizou, 'Prospects of Reconciliation, Co-Existence and Forgiveness in Cyprus in the Post-Referendum Period' (PRIO Report 4/2007, 2007) 64. The reasearch was based on 170 qualitative interviews with those living in different parts of Cyprus. The opinions of two generations of Cypriots were collected; those who lived through the events in the 1960s–70s, and those who have grown up in a divided island.

[256] Ibid

[257] Gürel, Hatay and Yakinthou 'Displacement Report 5' (n 105) 36

[258] Rama Mani, 'Balancing Peace with Justice in the Aftermath of Violent Conflict' (2005) 48(3) Development 25, 30; see also Balasco L M, 'The Transitions of Transitional Justice: Mapping the Waves from Promise to Practice' (2013) 12 Journal of Human Rights 198, 203

[259] Paul Gready and Robins S, 'From Transitional to Transformative Justice: A New Agenda for Practice' (2014) 8 IJTJ 339, 342-343. See also Patricia Lundy and Mark McGovern, 'Whose Justice?: Rethinking Transitional Justice from the Bottom-Up' (2008) 35 (2) Journal of Law and Society 265 where the authors support the need to adopt a participatory approach to achieve long-term sustainability.

[260] Wendy Lambourne, 'Transitional Justice and Peacebuilding after Mass Violence' (2009) 3 IJTJ 28 30; Lambourne also gives the Special Court and the Truth and Reconciliation Commission in Sierra Leone as examples; see Wendy Lambourne, 'What are the Pillars of Transitional Justice? The United Nations, Civil Society and the Justice Cascade in Burundi' (2014) 13 Macquarie Law Journal 41, 58

[261] Gready and Robins (n 259) 340-350

problem."[262] However, it has yet to identify the kind of solution it wants. It is said that the initiative proves the island's potential and it is believed that this will be an important "accelerator" in bringing people, institutions and businesses together.[263] However, it could be observed that, unlike the period leading to the referendums for the Annan Plan V when the TCs rallied in the streets, this group remained small. The reason for this might be disappointment following the Annan Plan and the emotional exhaustion caused by a lack of a solution on TCs.

Attracting the attention of various circles needs perseverance for any fresh initiative to have an impact on the society. Civil society actors can play an important role in mobilizing public opinion, informing the public and reaching out to victims, survivors, and others about processes to be followed. It remains to be seen whether this kind of an initiative can evolve further in the future to tackle the obstacles obstructing a settlement agreement, to include victim participation and to lead to a real grassroots Cypriot-led, Cypriot-owned solution.

However, it should also be added that, a negotiation process carried out behind closed doors for such a long period of time, tends to exacerbate negative effects on people's perceptions as a result of potential misinformation about highly sensitive issues.

The Colombian peace process, which has been in progress for decades as in Cyprus, provides an illustration of the importance of inclusivity, the problem of impunity and reconciling the needs of IDPs and refugees, who have been displaced many times, with the quest for peace and stability. The process incorporated approximately 60 victims of FARC who became consultants to the process and the government, brought to Havana (Cuba) by victim associations. Delegates included indigenous communities, Afro-Colombians, LGBT groups, military, police, business and trade unions. Although fraught with difficulty, primary needs and concerns of victims were heard and met helping to bridge the gap between victims and political

[262] The group immediately created a page on facebook for sharing events and opinions, initially, on what to do to put pressure on the leaders of the two communities. Further information on the group and their vision, mission, fields of operation, guiding principles, values and methods were put forth followed by calls for comments and contributions of anybody interested.

[263] Fiona Muller 'Unite Cyprus Now Proves the Island's Potential' *In Cyprus* (10 June 2017) <http://www.newsincyprus.com/news/78615/unite-cyprus-now-proves-the-island-s-potential> accessed 30 October 2018

elites, and giving victims access to networks to keep the process on track and enabling for lobbying in favour of the peace process during the 2016 referendum.[264]

Yakinthou further refers to Tunisia as an example of both best practice and learning from its own mistakes.[265] A Technical Committee for Transitional Justice was established in 2012 in Tunisia whose mandate included carrying out country-wide consultations and proposing a law on TJ to the National Constituent Assembly. The Committee was largely made up of civil society leaders, with sub-commissions, each covering parts of Tunisia's regional governorates. Public dialogues were held and victim and other stakeholders were consulted on their TJ needs. As a resul of all those efforts, the TJ law, passed in December 2013, led to the establishment of the Truth and Dignity Commission (TDC). This process shows the importance of civil society involvement to keep the democratisation process on track.[266]

III. Conclusion

The process of negotiations to resolve the Cyprus problem has been a vicious cycle with only minor differences between its various phases. During the initial phases of negotiations, participation of the two Cypriot community leaders was limited and dictated by others causing internal dissatisfaction similar to that of which resulted in the establishment of the Republic of Cyprus in 1960.

The Annan Plan has been the most comprehensive and detailed solution plan proposed so far. Although modified several times in an attempt to reconcile the demands of the two sides, it has ultimately been unsuccessful. The arguments in the south rejecting the Plan revolved around the issue of security, guarantees, property and the impact of Turkey on the politics of Cyprus. With respect to the property scheme of the Plan, the GCs continued to claim that it was in violation of international law, the principle of respect for human rights and the EU *acquis.* Most of them felt that their stance on the property issue was correct and in line with ECtHR judgments at that time. However, according to the principle of bi-zonality,

[264] Ibid; see also Pamina Firchow, 'Do Reparations Repair Relationships? Setting the Stage for Reconciliation in Colombia' (2017) 11 IJTJ 315

[265] Chrystalla Yakinthou, 'Transitional Justice in Cyprus, Challenges and Opportunities' edited by Ahmet Sözen & Jared L. Ordway (Security Dialogue Project, Background Paper. Berlin: Berghof Foundation & SeeD 2017) 12

[266] Ibid 12-13. The author further addresses the criticism against this process leading to debates on its legitimacy.

each federated state would be administered by one community having a clear majority of the population and of land ownership in its area. From this point of view, the provisions of the Plan were drawn up to preserve the said majority as a matter of principle. In any case, there was no political will to address these concepts in the south. Since one "Yes" vote was missing, the Plan failed.

Although the new terminology starting from 2008 has been a "Cypriot-owned, Cypriot-led" solution, this did not change the essence of the talks having been carried out behind closed doors without the inclusion of grass-roots groups. In other words, it seems that the idea of "Cypriot-owned, Cypriot-led" solution has been narrowly conceived. In other words, disagreement prevailed with alternative political agendas proposed. Surveys showing the tension between the desire for a solution and low expectations, draw attention to the need to encourage people to participate in the peace process.[267] This might be considered as proof that the obstacles are in fact politically motivated. The main idea of "building trust" behind the CBMs also proved futile as Sözen observes.[268] It is unfortunate that the parties considered every move towards CBMs as a political bargaining chip even when the aim was "building trust".

Other factors for the lack of a solution were also addressed in this Chapter. One of these was of the fact that Cyprus is a "comfortable conflict" considered as "peace" in the absence of an armed conflict. Despite the situation on the island being unsustainable, it still seems the *status quo* is accepted as it is and short-term political gains are at the fore for some on both sides. No one wants to leave their comfort zones.

Federalism is not only an institutional arrangement but requires a distinct political culture. It is not clear whether people, when asked how they would vote in a referendum about it, realise that it is based on power-sharing and equality. More education is, therefore, required.

Finally, prevailing ethno-centric nationalisms and manipulation by politicians had the greatest negative impact on people's perception, of an appropriate solution. This has been a factor generating and revealing communal fears causing an impasse regarding the issue of security in particular. On the other hand, like all other factors,

[267] Cyprus 2015 Initiative Report, 'Solving the Cyprus Problem: Hopes and Fears' (Interpeace/'Cyprus2015' Initiative 2011) 113
[268] Sözen,'The Cyprus Negotiations' (n 23) 15 note 14-15

ethnocentric nationalist approaches and manipulations cannot be considered the sole hindrance to the realisation of a united Cyprus.

Even if a new model provides a new framework for negotiations as supported and argued by Özersay, the lack of trust is likely to remain. Nevertheless, "linkage politics" as Tzimitras and Hatay advocate coupled with pursuing piecemeal solutions as Hatay and Bryant propose, might contribute to "building confidence along the way".[269] A more clearly articulated proposal by Sözen and Pantelides, to enable the two communities to develop the necessary culture and experience for cooperation could be another alternative for finding a solution.[270] Disputes and legal claims over property and uncovering the remains of the missing have "led to the realization that everyone has his or her own Cyprus problem, and that for many people solving their own Cyprus problems is more than enough".[271] These alternatives should be more thoroughly considered as alternatives to find a federal solution.

In the final analysis, overcoming the impact of all relevant factors is not easy. Public perceptions take time to change andthe conflict do not always remain the same. Yet, any steps to build trust and a common understanding should be taken to pave the way for creating a power-sharing agreement regardless of the negotiation process. Addressing inclusive experiences in other contexts such as Tunisia and Colombia could be the first illuminating step for Cyprus.

[269] Hatay and Bryant, 'Negotiating the Cyprus Problem(s)' (n 92) 22
[270] See Paraschos Interview (n 203)
[271] Hatay and Bryant, 'Negotiating the Cyprus Problem(s) (n 92) 22

Chapter 4 The Cyprus Problem and Property: A Human Rights Background

I. Introduction

Forcible displacement, property rights, the right to return home and freedom of movement have long been a problem associated with armed conflict.[1] The restoration of pre-war property rights of internally displaced persons and refugees may also be critical to restore peace.[2]

As in many countries, displacement has also been an issue for Cyprus, the personal, cultural and political significance of which cannot be underestimated.[3] Approximately 210,000 Greek and Turkish Cypriots, one third of the population, had to leave their property behind, and uproot themselves as a result of the "inter-communal strife and/or military action" which took place, in particular, between 1963 and 1974; the longest standing internal displacement situation in Europe.[4]

The controversy over property ownership as a result of the displacement has been one of the most contentious aspects of the Cyprus problem for the UN-backed inter-communal negotiations to solve. It was also a core factor in the rejection of the Annan Plan by Greek Cypriots, as discussed in Chapter 2. Each side supports a different solution for property rights of the displaced. While GCs tend to speak about return, TCs have defended the post-1974 realities and demographic changes in the northern part of the island.[5] This has also been reflected by some Greek scholars, the views of whom shall be addressed in this Chapter.

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[1] Elena K Proukaki, 'The Right of Displaced Persons to Property and to Return Home after Demopoulos', (2014) 14(4) HRLRev 701, 701

[2] Hans Van Houtte, 'Mass property claim resolution in a post-war society: the Commission for Real Property Claims in Bosnia and Herzegovina', (1999) 48 ICLQ 625, 625

[3] Laura Matson, 'Competing Land Rights, Legal Redress, and Political Settlement in Cyprus', (2012-2013) 31 Law & Ineq. 199, 200

[4] Deniz Ş Sert, 'Cyprus: Peace, Return and Property', (2010) 23 JRS 238, 238-239; see also Ayla Gürel and Kudret Özersay , 'The Politics of Property in Cyprus, Conflicting Appeals to 'Bizonality' and 'Human Rights' by the Two Cypriot Communities' (Prio Report, 3/2006) 4; for various phases of displacement in Cyprus see Ayla Gürel, Mete Hatay and Chrystalla Yakinthou, 'Displacement in Cyprus: Consequences of Civil and Military Strife Report 5' (Prio Cyprus Centre, Nicosia 2012). The numbers vary; for example, this does not include earlier displacement of TCs in 1963 or another 21,000 GCs who fled from Karpasia peninsula despite 1975 Vienna Agreement. See Charis Psaltis, Neophytos Loizides, Alicia LaPierre and Djordje Stefanovic, 'Transitional Justice and Acceptance of Cohabitation in Cyprus (2019) 42 (11) Ethnic and Racial Studies 1850

[5] Psaltis et al, 'Transitional Justice and Acceptance of Cohabitation' (n 4) 1851; Charis Psaltis, Huseyin Cakal, Neophytos Loizides and Işık K Bonnenfant, 'Internally Displaced Persons and the Cyprus Peace Process' (2020) 4 (1) International Political Science Review 138, 139-40

The property dispute has also been one of the most judicialised in the world[6] which the ECtHR has addressed among other things.[7] Following Turkey's intervention in 1974, numerous cases have come before the the Strasbourg institutions. The Greek Government lodged three applications against Turkey under former Article 24 of the ECHR.[8] In its report on 10 July 1976 in the first two of these, the European Commission of Human Rights found that the respondent State had violated Articles 2, 3, 5, 8, 13 and 14 of the Convention and Article 1 of Protocol No 1. The third application was subject to a report adopted by the Commission on 4 October 1983 under former Article 31 in which it expressed the opinion that Turkey was in breach of its obligations under Articles 5 and 8 of the Convention and Article 1 of Protocol No. 1.

The Court became a more important factor for Cyprus in the 1990s following the individual applications of GCs especially with the landmark judgment of *Loizidou v Turkey,*[9] and later with the *Xenides-Arestis*[10] and *Demopoulos and others*[11] cases.

Before tracing the ECtHR's case-law regarding the GC property cases, this Chapter will first consider the right to return in international law, property restitution and the implementation of restitution schemes in several countries. Following this, the stance of the ECtHR regarding the restitution of property in transitional cases in the former Communist states of Central and Eastern Europe will be outlined[12] in order to shed some light on how the human rights legal framework fits within the transitional justice model. Recent surveys on the perceptions of both communities in Cyprus towards TJ and land disputes will also be considered.

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[6] See Kudret Özersay and Ayla Gürel, 'The Cyprus Problem at the European Court of Human Rights' in Thomas Diez and Nathalie Tocci (eds) *Cyprus: A Conflict at the Crossroads* (Manchester University Press, 2009) 273

[7] Nikos Skoutaris, 'Building transitional justice mechanisms without a peace settlement: a critical appraisal of recent case law of the Strasbourg Court on the Cyprus issue', (2010) EL Rev 720, 720

[8] *Cyprus v Turkey* Apps Nos 6780/74, 6950/75 Commission Report (10 July 1976); App No 8007/77 Commission Report (4 October 1983)

[9] *Loizidou v Turkey* App No 15318/89 Merits (18 December 1996)

[10] *Xenides-Arestis v. Turkey* App No 46347/99 Merits (22 December 2005); *Xenides-Arestis v Turkey* App No 46347/99 Just Satisfaction (7 December 2006)

[11] *Demopoulos and others v Turkey* Apps Nos 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04, 21819/04 Admissibility (1 March 2010)

[12] Proukaki (n 1) 701; see also Tom Allen, 'Transitional Justice and the Right to Property Under the European Convention on Human Rights', (2005) 16 Stellenbosch L Rev 413, 413

II. The Right to Property and Transitional Justice

A. "The Right to Return Home" in International Law

Although the "right to return" is recognized in international human rights law, it is said that it only applies to repatriation to one's "country of origin", but not to return to one's "home" within that country.[13] As a result of concerns with regard to the sustainability of repatriation of refugees and durable solutions for IDPs, there have been calls to extend the right to return to include "homes of origin".[14] Buyse asks for example whether such a "right to return to one's home exists under general public international law" and whether there is a "right to housing and property restitution". This is important since the possible existence of an autonomous right to housing and property restitution could strengthen the chances of one's regaining her/his home following conflict since such a right could serve "to limit the state's discretion on what form of reparation to choose". In the absence of a multilateral treaty on a right to property restitution, Buyse's analysis is based on a review of international human rights treaties, the practice of the UN institutions, international humanitarian law, and state practice.[15] According to him, the right to housing restitution can be based on either restitution as a "remedy for human rights violations" or on the general "right to return". In this respect, he states that the right to return home could be inferred from international humanitarian law, human rights law, peace treaties or voluntary repatriation agreements as proof of state practice and resolutions and recommendations of the Security Council. However, the issue is not clear when it

[13] Rhodri Williams, 'The Contemporary Right to Property Restitution In the Context of Transitional Justice' (ICTJ, May 2007) 7; see also Proukaki (n 1) 719 where she states that the right to return "arguably entails not only the right to return to one's country, but also quite significantly, the right to return to one's home".

[14] Williams (n 13) 7-8

[15] See Antoine Buyse 'Post-conflict Housing Restitution: The European Human Rights Perspective with a Case Study on Bosnia and Herzegovina' (School of Human Rights Research Series, Volume 25, E.M Meijers Instituut, 2007) 143. Buyse refers, among other sources, to UDHR Article 13(2) (a general right to return); ICCPR Article 12 (freedom of movement); 1965 ICERD Article 5 (d)(ii) (a general right to return); Protocol 4 ECHR Article 2(1); UN Security Council Res 820, 17 April 1993 (Bosnia and Herzegovina); UN Security Council Res 876, 19 October 1993 (Abkhazia and Georgia); UN Security Council Res 971, 12 January 1995 (Abkhazia and Gerogia); UN Security Council Res 1036, 12 January 1996; UN Security Council Res 1287, 31 January 2000 (Abkhazia); see also UN Security Council Res 1009 10 August 1995 (Croatia); UN Security Council Res 1199 23 September 1998 and Res 1244, 10 June 1999 (Kosovo) (None of these resolutions were enacted under Chapter VII of the UN Charter, thus they are not legally binding); Guiding Principles on Internal Displacement Principle 28(1) and Principle 29(2) (Principles are not binding and their focus is on state responsibility rather than individual rights); the Fourth Geneva Convention Article 49 (on states' obligations to transfer displaced to their homes), Sub-Commission on the Promotion and Protection of Human Rights, Principles on Housing and Property Restitution for Refugees and Displaced Persons (UN Doc (2005) E/CN.4/Sub.2/2005/17) *(Pinheiro Principles)*. For state practice, Buyse also refers to voluntary repatriation, resettlement and peace agreements and memorandum of understandings.

comes to a specific right to housing restitution. Buyse argues that such a right logically follows from the right to return to one's home. Referring to national contexts such as Bosnia and Herzegovina,[16] he states that the right to housing restitution has made its main strides forward so far in the context of refugees and displaced persons. Nonetheless, when it comes to the question whether it is as yet a rule of customary international, he concludes that although there is a recent and clear trend towards the formation of a customary right to property restitution, the necessary criteria[17] have not been fulfilled yet. Focusing on the UN Principles on Housing and Property Restitution for Refugees and Displaced Persons, Buyse considers that the trends regarding housing restitution reached fruition here. The Principles ensure the return of refugees and displaced persons to their homes and places of original residence and proclaim the right to housing restitution as a distinct right. However, Buyse is of the opinion that "one may question whether it is indeed an existing and independent right as yet, as the Principles assert". As he claims, the Principles on Housing and Property Restitution as an important text of soft law in this field demonstrate this trend, but it still needs development.[18]

Proukaki is of the opinion that there is "a right to return to one's home and land" in international law. She particularly refers to Article 49 of the Fourth Geneva Convention which reads: "persons thus evacuated shall be transferred back to their homes as soon as hostilities in the area in question have ceased".[19] Furthermore, pointing at Article 12 of the ICCPR (freedom of movement) as the legal basis of the right to return home, she asserts:

> *While […] derogations may be justified during armed conflict or unrest for as long as hostilities continue, they are not justified in situations in which there are*

[16] The General Framework Agreement for Peace in Bosnia and Herzegovina (1995) Dayton Agreement ending the Bosnia war envisaged a strong right to return home.

[17] Buyse (n 15) 159. The state practice - should include those states whose interests are particularly affected, should be extensive and virtually uniform, should show a general recognition that a rule of law or legal obligation is involved; see North Sea Continental Shelf Cases: *(Federal Republic of Germany v. Denmark; Federal Republic of Germany v. the Netherlands)* (1969) ICJ Reports 3 para 74 Buyse states that no precise quantitative evaluation to show whether practice is extensive has been made)

[18] Buyse (n 15) Chapter 5

[19] Elena Katselli Proukaki, *Armed conflict and forcible displacement: individual rights under international law* (Routledge 2018) 50. The author also refers to other provisions of the Geneva Conventions and international humanitarian law as well as provisions of international human rights law to support her view that there is an established right to return home as a right on its own; for a detailed analysis see Chapter 2 of her book.

no longer such hostilities and the exigencies of the situation are no longer in place.

Having said this, and failing to make a distinction between "right to return home" and "property restitution", she refers to the case of Cyprus and indicates that Turkey still refuses to allow the return and restitution of property to displaced Greek Cypriots.[20]

Considering the discussions above, it could be stated that property restitution is one of the remedies for human rights violations. Although it could be considered as the preferred remedy, its implementation and its position within the hierarchy of modes of reparation should be considered in the context of factors causing the violations and other rights relevant and/or attached to it. To analyse the issue further, various examples from specific countries regarding the property restitution will be outlined in the next sub-section.

B. Property in Transitions

The TJ paradigm struggles to confront socioeconomic inequalities[21] with relevant mechanisms paying inadequate attention to questions of land rights and distribution.[22]

Dominant TJ discourses favour restitution as a method of redressing violations of property rights only if it is impossible to return the land to the victims or if restitution would be unfair, should compensation be seen as the appropriate type of reparation.[23] In other words, land questions are often considered as an issue of restitution to a pre-existing status quo which is influenced by economic efficiency and financial constraints. This, on the other hand, could mean ignoring wider structural problems.[24]

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[20] Ibid 51-54

[21] Matthew Evans, 'Structural Violence, Socioeconomic Rights, and Transformative Justice', (2016) 15(1) Journal of Human Rights 1, 14-15

[22] Daniel Fitzpatrick and Akiva Fishman, 'Land Policy and Transitional Justice After Armed Conflicts' in Dustin N Sharp (ed) *Justice and Economic Violence in Transition (*New York: Springer, 2014) 263; see Khanyisela Moyo, 'Mimicry, Transitional Justice and the Land Question in Racially Divided Former Settler Colonies' (2015) 9 (1) IJTJ 70, 72

[23] Moyo (n 22) 71

[24] Chris Huggins, 'Linking broad constellations of ideas: Transitional justice, land tenure reform, and development' in Pablo Greiff and Roger Duthie (eds) *Transitional Justice and Development: Making Connections* (New York: Social Science Research Council, 2009) 361

While restitution cannot be an adequate remedy for some in dealing with intergenerational land issues,[25] there is no consensus in international law on the issue of compensation for expropriated land.[26] Until now, conventional TJ approaches have arrived at a consensus on property rights,[27] problems more evident in places like South Africa and Zimbabwe, where both countries' land reform programmes had to correct land redistribution patterns which favoured white commercial farms and marginalized black communal areas.[28] In other words, land redistribution and equalization was not prioritized where it should have been. The ANC government in South Africa, for example, adopted a "willing seller, willing buyer" policy to resolve the historically rooted economic and land ownership inequalities through a market-based mechanism[29] which resulted in payment of compensation to large landowners for unwanted land, and consequently, failed to transform conditions for the marginalized.[30]

The majority of land restitution processes have ignored historically unjust land allocation patterns and various cycles of dispossession/occupation which have created competing claims to land which are sometimes intergenerational. This further complicates situations where inequalities are inherent in land access and ownership and are likely to erode reconciliation and development initiatives.[31]

Adopting a transformative justice lens and utilizing restitution as one among several remedies could prove useful when redistribution is needed to reduce structural violence.[32] In other words, distribution is important in contexts such as South Africa or Colombia. But this is not the case for land issues in Cyprus as noted in Chapter 1. Following this brief examination of property and transition, the subsequent sub-sections will further address restitution which is considered the primary remedy in resolving land issues in Cyprus both by GC officials and some scholars.

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[25] Moyo (n 22) 72; Wouter Veraart, 'Redressing the past with an eye to the future, The impact of the passage of time on property rights restitution in post apartheid South Africa' (2009) 27 (1) NQHR 45, 52

[26] See Eduardo Moise´s Pen˜alver, 'Redistributing Property: Natural Law, International Norms, and the Property Reforms of the Cuban Revolution,' (2000) 52(1) Florida Law Review 107

[27] Moyo (n 22) 72

[28] Ibid

[29] Ibid 72-73

[30] Ibid; Evans (n 21) 10

[31] Moyo (n 22) 73, 85

[32] Evans (n 21) 10; Moyo (n 22) 85

C. Property Restitution in Practice and Transitional Justice

Restitution is a mechanism to restore victims to the condition they would have been in, had no violation of their rights occurred.[33] As expressed in the previous sub-section, in many political transitions and peace settlements, property restitution has been considered as a remedy for redressing past injustices, for example, for communist nationalization policies in Europe, for apartheid confiscations in South Africa, for ethnic cleansing in Bosnia, for refugees and displaced persons in Mozambique and 1994-1995 agreements in Guatemala ending the armed conflict.[34] Some of these cases will be touched upon below.

Following the demise of communism, Central and Eastern European states dealt with the issue of loss of property in diverse ways. Some undertook large-scale restitution processes, while others created a right to partial compensation, with some offering no remedy to victims of property confiscations at all.[35] Poland has, for example, resisted restitution and not instituted a restitution policy.[36] The commitment of states to restitution schemes also varied.[37] For example, in Romania the courts and administrative authorities often issued conflicting decisions for the same property.[38] In Czechoslovakia, restitution programs, for economic feasibility, limited to resident citizens[39] were integral components of transition from socialism to a liberal economy and the laws were designed to re-institute pre-socialist ownership.[40] Limitations were also based on nationality, the current use or ownership of the property, and the timing and circumstances of original loss.[41] Although relevant restitution programs had been

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[33] Williams (n 13) 1

[34] ibid; Buyse (n 15) 150

[35] Tom Allen 'Transitional Justice and the Right to Property under the European Convention on Human Rights' (2005) 16 Stellenbosch L Rev 413, 413; see also Tom Allen 'Restitution and Transitional Justice in the European Court of Human Rights' (2006-2007) 13 Colum J Eur L 1, 3 ; see also Michael Hamilton and Antoine Buyse 'Introduction' in Antoine Buyse and Michael Hamilton (eds) *Transitional Jurisprudence and the ECHR: Justice Politics and Rights* (Cambridge University Press 2016)

[36] Lynn M Fisher and Austin J Jaffe, 'Restitution in Transition Countries' (2000) 15 Journal of Housing and the Built Environment 233, 244

[37] Allen, 'Restitution and Transitional Justice in the European Court of Human Rights' (n 35) 3

[38] Ibid

[39] Residency requirement was later abolished by the Constitutional Court; see note 135 of Williams (n 12) 21

[40] Fisher and Jaffe (n 36) 241; see also Williams (n 13) 11

[41] Allen 'Restitution and Transitional Justice in the European Court of Human Rights' (n 35) 3; see also Mark Blacksell and Karl Martin Born 'Private Property Restitution: The Geographical Consequences of Official Government Policies in Central and Eastern Europe' (2002) 168 (2) The Geographical Journal 179, 179; see also Andrzej K Kozminski 'Restitution of Private Property, Re-privatization on Central and Eastern Europe'(1997) 30 (1) Communist and post-communist Studies 95, 99

initiated before the separation of the Czech and Slovak Federal Republics in 1992, the two successor states (the Czech Republic and Slovakia) also embarked on similar programs.[42] In the Czech Republic, the issue of restitution has been complicated as a result of the high number of claimant groups, the passage of time since the bulk of confiscations, and sensitive political considerations regarding the groups to be included and excluded.[43] In both the Czech Republic and Poland, restitution policies were designed to prevent ethnic Germans expelled at the end of war from returning or recovering title.[44] Hungary offered compensation rather than restitution; restitution in kind was excluded to protect the interests of current owners.[45] Germany initially offered a combination of compensation and restitution, but eventually opted for privatization over the two with restitution for expropriations during the Soviet occupation of 1945-49 denied.[46] In other words, states did not restore every property to every dispossessed person.[47]

As Allen observes, the diversity among countries is not surprising since the circumstances of each case vary. In other words, practical difficulties complicated restitution depending on the extent of nationalization in each state.[48] Furthermore, resettlement of refugees following World War II affected states and impacted restitution policies differently.[49] As a result, there has been no general consensus on the desirability of restitution and it is not clear whether restitution improves or retards economic growth or whether it has a positive effect on the rule of law.[50] Resolution 1096 (1996) of the Parliamentary Assembly, the Council of Europe's guidance to handle the heritage of former communist totalitarian systems, an example of transitional justice,[51] states that the old structures and thought patterns have to be dismantled and overcome to re-establish a civilised, liberal state under the rule of

[42] See Anna Gelpern, 'The Laws and Politics of Reprivatization in East-Central Europe: A Comparison' (1993) 14 (3) Journal of International Law 315, 316 <http://scholarship.law.upenn.edu/jil/vol14/iss3/2/> accessed 23 March 2017
[43] Williams (n 13) 12
[44] Allen, 'Restitution and Transitional Justice in the European Court of Human Rights' (n 35) 4; see also Williams (n 13) 784 where in the Czech Republic restitution was not an option for expropriations which took place prior to 1948 or for property belonging to Sudeten Germans.
[45] Kozminski (n 41) 100
[46] Allen 'Restitution and Transitional Justice in the European Court of Human Rights' (n 35) 3
[47] Ibid 2
[48] Ibid 4
[49] Ibid 4
[50] Ibid 4; Michael Heller and Christopher Serkin 'Revaluing Restitution: From the Talmud to Postcolonialism' (1999) 97 Mich L Rev 1385 at 1403-1405; see also Eric A Posner and Adrian Vermeule, 'Transitional Justice as Ordinary Justice' (2004) 117 (3) Harv L Rev 761, 788-789
[51] See James A Sweeney, *The European Court of Human Rights in the Post-Cold War Era: Universality in Transition* (Routledge 2013) 18

law.[52] It notes that, in principle, restitution should take place "if this is possible without violating the rights of current owners who acquired the property in good faith or the rights of tenants who rented the property in good faith, and without harming the progress of democratic reforms". If this is not possible, "just material compensation" should be awarded.[53] In other words, the Resolution does not require restitution if the current owners' rights need to be protected. It also states that, "the key to peaceful coexistence and a successful transition process lies in striking the delicate balance of providing justice without seeking revenge".[54] From this point of view, it can be stated that while implementing restitution schemes in some cases the risks entailed during the process of transition and the delicate relationship between facing the past and governing the present cannot be underestimated.[55]

In examining the role of restitution in redressing violations of civil or property rights which occurred before transition,[56] Posner and Vermeule refer to critics of restitution programmes who argue that restitution does not adequately resolve property rights issues.[57] According to these critics, for a successful transition, the economy must flourish. Otherwise, democratic transition and the restitution arrangements may themselves be blamed by those who suffer as a result of economic failure where this would undermine the transition and create the possibility of at least a partial restoration of the old regime. In other words, the old regime may regain power and credibility as a result of the economic failure of the new regime.[58] The critics also suggest that, as a result of the potential burden on budgets creating new claims for victims of the old regime would also have a negative impact on the economy.[59] Posner and Vermeule argue that, regardless of how properties are distributed during transitional periods, property holders will nevertheless deal with them in response to prevailing market forces. Furthermore, in every successful market economy, property is always subject to uncertainties including increased property taxes undermining their value.[60] According to Posner and Vermeule,

[52] Measures to Dismantle the Heritage of Former Communist Totalitarian Systems – PACE Resolution 1096 (1996) (27 June 1996) para 1
[53] See also Sweeney (n 51)103
[54] Para 3 of the PACE Resolution 1096
[55] See Sweeney (n 51) 19
[56] See Posner and Vermeule (n 50) 762 (The authors disagree with these critics)
[57] Ibid 784
[58] Ibid
[59] Ibid
[60] Ibid 785-786

frictions from uncertainties regarding restitution rights (what they are, who owns them, how they will be enforced) could provide a more reasonable ground for objections to restitution programs because, where this is the case, people might stop investing in or buying property until they know how restitution claims will be adjudicated.[61] On the other hand, this can be dealt with by limiting the period of time to lodge restitution applications.[62] Citing post-war Germany as an example, the authors argue that restitution policies even contribute to economic or political development.[63] While it is not easy to measure the impact of these criticisms and responses, it can be stated that restitution programs should be assessed on a case-by-case basis particularly as far as post-communist regimes are concerned. Three points should be observed: First, restitution programs discourage future governments from expropriating "property" and, economically, send a signal to investors. Second, they limit the powers of post-transitional governments which usually have a connection with the antecedent regime. Finally, they offer the possibility of extinguishing moral and political objections to existing allocation of properties.[64] In the final analysis, while these reflect the "restorative" aspect of transitional justice, each transitional case should be evaluated on its own terms where a fair and proportionate balance should be struck between the rights of current users and restoring the property concerned to its original owner.

Allen argues that there is no consensus on the desirability of restitution.[65] For example, the impact of restitution on economic growth/stability and the restoration of rule of law is disputed.[66] Allen and Douglas note that restitution may have the effect of "restoring dignity and reinstating victims as full participants in the social, political and economic life of the community" and that it could be particularly important for the purposes of transitional justice.[67] Referring to the Pinheiro Principles, Proukaki questions whether peace is attainable without restitution and considers that the return of property to initial owners is a tool for restorative justice and for the rule of law

[61] Ibid 785
[62] Ibid
[63] Ibid 788-789
[64] Ibid
[65] Allen, 'Restitution and Transitional Justice in the European Court of Human Rights' (n 35) 4
[66] Ibid
[67] Tom Allen and Benedict Douglas, 'Closing the Door on Restitution' in Antoine Buyse and Michael Hamilton (eds) *Transitional Jurisprudence and the ECHR: Justice Politics and Rights* (Cambridge University Press 2016) 215

since unresolved property disputes may give rise to further conflict.[68] She also maintains that restitution is a means of providing for the participation of victims in the social, political and economic life of the community.[69] However, the current users' rights over the said properties and their participation in the social, political and economic life of the community cannot be ignored. Although it is argued that those who have unjustifiably been deprived of their property should have the absolute right to return, Blacksell and Born observe that such a categorical position would cause other injustices.[70] In any case, supporting the existence of a right to return home and its implementation are different matters. It is true that "the right to return" would be meaningless if it did not include a "right to return home" However, it is difficult to support an absolute right to property restitution for original owners since this would marginalise other social considerations, a particular issue for Cyprus considering the *sui generis* situation it has been in for more than 50 years.

However, although controversial, it is also alleged that restitution programs strengthen and build social stability.[71] Ballard states that, although return of property is a factor in rebuilding post-war social and economic stability, it is not sufficient since returnees need physical security, access to jobs, education, and social services.[72] Although the right to return was considered as a means to achieve peace in the former Yugoslavia,[73] whether this proved successful is another matter. In Bosnia, people did not want to return to their "homes" in regions without socio-economic stability,[74] which also illustrates other challenges. The General Framework Agreement for Peace in Bosnia and Herzegovina (The Dayton Peace Agreement), signed on 14 December 1995 by Bosnia and Herzegovina, Croatia and the Federal Republic of Yugoslavia, established a weak federal system where the majority of powers were divided between the Republika Srpska and the Federation of Bosnia and Herzegovina (the two Entities).[75] The Entities were given all governmental functions

[68] Proukaki (n 1) 720
[69] Ibid
[70] Mark Blackseel and Karl Martin Born 'Private Property Restitution: The Geographical Consequences of Official Government Policies in Central and Eastern Europe' (2002) 168 (2) The Geographical Journal 178, 188
[71] Megan J Ballard, 'Post-conflict Property Restitution: Flawed Legal and Theoretical Foundations' (2010) 23 Berkeley J Int.l L 462, 491
[72] Ibid
[73] Proukaki (n 1) 728
[74] Ballard (n 71) 491
[75] Antoine Buyse 'Home Sweet Home? Restitution in Post-Conflict Bosnia and Herzegovia' (2009) 27 NQHR 9, 14 (The Republic of Bosnia and Herzegovina is consisted of two "Entities".)

and were "some sort of mini-states" with sovereignty.[76] It is even said that, the Dayton Peace Agreement, in fact, intensified the division along ethnic lines generated by the conflict.[77] The Constitution (Annex 4 of the Agreement) states that:

> *All refugees and displaced persons have the right to freely return to their homes of origin. They have the right, in accordance with Annex 7 to the General Framework Agreement, to have restored to them property of which they were deprived in the course of hostilities since 1991 and to be compensated for any such property that cannot be restored to them. Any commitments or statements relating to such property made under duress are null and void.*[78]

The Agreement supported extensive property restitution, sought to reverse ethnic cleansing by way of a strong individual right to return to homes of origin, and privileged return as a matter of policy.[79] However, out of a pre-war population of 4.5 million, more than 1 million were internally displaced and over 1.2 million were in 25 other countries primarily in the neighbouring republics of former Yugoslavia and throughout Western Europe.[80] The international community strongly supported return in Bosnia both as a measure of corrective justice and as a means of repatriating Bosnian refugees from Western Europe and to begin with, they were not concerned for local authorities obstructing the process of return. However, once it became apparent that these efforts were insufficient to implement the policy of return, the international community took legal and practical steps to change the situation.[81] Having significant resources, such as peacekeeping forces, civilian monitoring networks and a multi-million dollar reconstruction program which could be used to reward compliance with return, they have been an actor in Bosnia to develop measures against the challenges confronted ever since. Thus, the difficulty was not only socio-economic instability as mentioned above, but also the unwillingness of relevant nationalistic local authorities to allow return of original inhabitants of other

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[76] Ibid
[77] Ibid
[78] Article II (5)
[79] Article I (1) Annex 7 (the Agreement on Refugees and Displaced Persons) of the Agreement stresses that "the early return of refugees and displaced persons is an important objective of the settlement of the conflict in Bosnia and Herzegovina."
[80] Buyse, 'Home Sweet Home?' (n 75) 18; see also Tra T Pham, 'Mass property claim resolution in a post-war society: the Commission for Real Property Claims in Bosnia and Herzegovina' (1999) 48 (3) ICLQ 625, see footnote 1
[81] Ibid 20

ethnicities or to discourage departure of inhabitants of their own ethnicities from areas they controlled.[82] Another substantial difficulty was the allocation of alternative properties to subsequent users. Due to the large scale of displacement, it was assumed that subsequent users would repossess their own pre-war homes and that alternative accommodation would only be provided as an interim measure. But the issue was more complicated. Pleading a lack of adequate space and the need to protect current occupants, local authorities hindered enforcement. While it was initially assumed that the local authorities would take the ownership for the implementation of the Agreement, the absence of progress in the initial years dashed these hopes.[83] It was said that Dayton was more like a ceasefire than a political settlement, and the ambiguity regarding the fundamental issues such as the return of refugees and displaced persons left the issues contested rather than leading to cooperative state-building.[84] As Donais states, the Agreement sustained the conflict "through a consociational political system which institutionalized ethnic divisions at all levels of the country's political system",[85] and it is said that, in the final phase (2002 – 05) of the restitution process, it became obvious that restitution decisions were not always followed by actual returns.[86] Lack of employment opportunities, difficulties in obtaining social benefits, local schools being hostile towards minorities, and the failure to return farm land and businesses simultaneously with housing made return difficult.[87] Therefore, patterns of discriminatory action against minorities compounded challenges.[88] Bosnia illustrates that restitution can be effective if implemented for durable solutions rather than as a means of *dictating* return.[89] In other words, as Harvey states, "[...] the primary interests of different actors involved in promoting "durable solutions" for displaced populations

[82] In Bosnia, the three parties to the conflict were Muslim Bosniaks, Orthodox Serbs and Catholic Croats. As a result of the ethnic cleansing, most people had been living in areas of their ethnic majority. Domestic authorities implemented discriminatroy laws, provisions of laws which made restitution practically impossible, charging illegal fees or by ignoring restitution claims (See ibid 18)
[83] Timothy Donais, 'Power Politics and the Rule of Law in Post-Dayton Bosnia' (2013) 7 (2) Studies in Social Justice 189, 196
[84] Ibid
[85] Donais (n 83) 196
[86] Buyse, 'Home Sweet Home?' (n 75) 24
[87] Ibid
[88] Ibid
[89] Williams (n 13) 33-39; Joanna Harvey 'Return Dynamics in Bosnia and Croatia: A Comparative Analysis' (2006) 44 (3) International migration 89, 91-93; for a framework of local laws and practice see Timothy William Waters 'The Dayton Accords, Property Disputes, and Bosnia's Real Constitution' 40 Harvard Intl LJ 517; see generally Antoine Buyse, 'Home Sweet Home?' (n 75) 9; See also Eric Rosand 'The Right to Return under International Law Following Mass Dislocation: The Bosnia Precedent' (1998) 19 Michigan J Int'l L 1091, 1139

(international agencies, "host" governments, and "home" governments) frequently have not shared the interests of those populations. Efforts by nationalist parties to relocate refugees and displaced persons to politically sensitive areas, and a corresponding desire on the part of international actors to oppose local integration and promote return, have combined to make it very difficult for individuals to take independent action and to integrate locally."[90]

The passage of time is also a factor in discussions regarding restitution of property.[91] In the Czech Republic, considered above, there have been challenges in this respect. By 1989, claims for nationalized and confiscated property were related to events which occurred almost twenty years before, claims of Sudeten Germans were over forty years old and most Jewish claims were up to fifty years old.[92] In other words, because the claims for restitution were "intergenerational"[93], they presented challenges[94] such as parties to such proceedings might have died, evidence might have been lost, legal uncertainty for long-settled acts might have arisen,[95] and current users, who have used or even owned the property concerned for decades, may have also acquired rights to it. Therefore, even if the expropriations were unjust, the legal interests of current users should also be taken into account.[96] Furthermore, in the Czech Republic, the expropriations did not breach Czechoslovakia's international obligations at the time.[97] The final sub-section attempts to further explore reparatory justice over time.

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[90] Harvey (n 89) 107
[91] See Christine D Gray, *Judicial Remedies in International Law* (Oxford 1990) 15
[92] Williams (n 13) 14
[93] On intergenerational justice see Jonathan Steinberg 'Reflections on Intergenerational Justice' 71 in *Legacy of Abuse: Confronting the Past, Facing the Feature* ed Alice H Henkin (The Aspen Institute 2002)
[94] Williams (n 13) 14-15
[95] Ibid 15; For the difficulties presented by the passage of time see also Keith N Hlyton 'A Framework for Reparations Claims' (Boston University School of Law Working Paper Series, Law and Economics Working Paper No 03-05, 2003) 36 <http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1108&context=twlj> accessed 3 March 2017
[96] Williams (n 13) 15
[97] Ibid

D. Redressing the Past with Restitution of Property?

1. Reparations in Transitions

Although there is a clear obligation upon states to remedy violations, the form this should take is another matter.[98] It is said that reparations, being essential to any transitional justice initiative, include, "in some combination and as appropriate", restitution, compensation and rehabilitation in mind, body and status.[99] Revealing the truth, holding perpetrators accountable and ending violations are also measures which can have a reparative effect.[100] As Teitel observes, in national debates, the question of reparatory justice is a complicated problem inherited by the successor regime causing conflicts between the backward-looking purposes of compensating victims and the state's forward-looking political interests.[101] Transitional reparatory justice arguably reconciles the dilemma between the corrective aims and the forward-looking goals of transformation.[102]

Furthermore, reparations should not be empty promises or temporary measures[103] but should instead focus directly on the victims' situation endorsing their status as bearers of rights, delivering reparations, acknowledging past violations, indicating responsibility and commitment to respond to harms, and have the potential to build trust and restore dignity.[104] Having said this, although typically absent, acknowledgment is referred to by victims as the most important element of reparations.[105] In the final analysis, it is important to remember that reparations are part of a larger agenda of "peacebuilding, reconstruction, relief and nation-building, efforts"[106] including planning, financing and immediate action as well as a long-term strategy.[107] Emergent limitations should be addressed, norms should be designed to ensure continuity particularly for lack of political will in the future, and a national budgetary with a special fund relying on donations or another mechanism should be carefully considered and planned.[108]

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[98] Ruti Teitel, *Transitional Justice* (Oxford University Press 2000) 119
[99] Lisa Magarrell, *Reparations in Theory and Practice* (2007 ICTJ) 1-2; see also ibid
[100] Magarrell (n 99) 1
[101] Teitel (n 98) 119
[102] Ibid
[103] Magarrell (n 99) 1
[104] Ibid 2
[105] Ibid
[106] Ibid 3
[107] Ibid 11-12
[108] Ibid 11-14

2. The Passage of Time as a Factor

With the passage of a long time, reparatory acts become increasingly symbolic, mostly taking the form of apologies since the harm inflicted is considered as a reputational one in the public eye and, thus, redressable accordingly.[109] Teitel notes that, reparatory acts having the backward-looking purpose of compensating victims of past abuses and foward-looking national political interests are often contested. In this regard, it i said that transitional reparatory justice reconciles the dilemma of balancing corrective aims with the forward-looking purposes of transformation.[110]

It should be noted that, despite long passage of time, injustices may remain since deprivation of property is also likely to have destroyed people's livelihoods.[111] On the other hand, although restitution of property may still be possible in some cases, it will typically not be possible to restore livelihoods, the community and the culture linked to property.[112] This problem lies at the core of claims and creates a dilemma between corrective and distributive justice because, while corrective justice aims to remedy a past wrong by returning the property to the original owner, distributive justices targets the overall situation with a forward-looking approach.[113] Veraart notes that the South-African restitution process illustrates the effect of passage of time on large scale restitution schemes within a rapidly changing society. He notes that, restitution may still take place but its form and content will differ from corrective mechanisms in private law framed as disputes between original owners and current owners in good or bad faith.[114] He continues:

> *After a substantial lapse of time, the financial burden shifts to the collective as a whole and an ambitious restitution policy will inevitably become more difficult to implement and entangled in a myriad of redistributive and future-oriented policies, with ever-present risk of dissolving into them.*[115]

Clearly, introducing a legal response to injustices is crucial irrespective of the passage of time. On the other hand, restitution of property has its momentum and it

[109] Teitel (n 98) 140
[110] Ibid
[111] Veraart (n 25) 52
[112] Ibid
[113] Ibid 54
[114] Ibid 58
[115] Ibid

should take place as soon as possible following injustices.[116] As the gap between injustices and the moment of restitution expands, the law's function changes.[117] In South Africa, according to Verraart, land reform and restitution were initiated on the basis of a constitution where the process had become lengthy and had not borne fruit as expected. In other words, what was envisaged by the constitution differed greatly from the actual progress on the ground.[118] Thus, the break with the past might sometimes remain symbolic when it fails to deliver quick and clear responses to diverse past injustices.[119] However, this should not mean that claims generally weaken over time.[120] In other words, while the form of redress might change as traditional model of corrective justice recedes, the aim of repairing past wrongs should remain.

How does the passage of time relate to the property of the displaced in Cyprus then? The answer to this question involves the extent of displacement.

The escalation of intercommunal violence in the summer of 1958 led to the displacement of approximately 2,700 TCs from 36 villages and, 1,900 GCs from Nicosia and eight villages. When TCs proclaimed a separate municipality in 1958 in the north of the city, Nicosia was already divided by a barbed wire fence. When the RoC was declared in 1959, almost half of the TCs displaced in 1958 returned to their villages, while only a small number of GCs did so.[121] In 1960, when the RoC was established, GCs constituted almost 77% of the total population of the island, while TCs constituted 18%.[122] When inter-communal violence broke out again in 1963, TCs withdrew from the government and retreated into enclaves. Violence further caused the displacement of 1,500-2,000 Greek and Armenian Cypriots, and approximately 25,000 TCs. While the displacement of Greek and Armenian Cypriots was mostly from Nicosia, TCs displacement was distributed accross the island. Between December 1963 and August 1964, TCs abandoned 72 mixed villages and 24 TC villages. Furthermore, eight mixed villages and the six largest towns were

[116] Ibid 59
[117] Ibid
[118] Ibid
[119] See ibid 59. The author notes that the fact that the process is "still a modest, but invaluable sign of a legal order trying to come to terms with its past and offering new hope for the future."
[120] See Teitel (n 98) 138
[121] Gürel, Hatay and Yakinthou, 'Displacement Report 5' (n 4) 6. No numbers were indicated by the authors but, it was stated that approximately 70 GCs returned to Lefke, barely 10% of those displaced from the town.
[122] Ibid 7

partially vacated.[123] Approximately 25% of the TC population was displaced during this period almost 90% of whom lived in 42 enclaves which were subject to economic and military siege. Following the Greek Coup and Turkish military intervention of Cyprus in July 1974, the majority of GCs fled northern Cyprus while others surrendered in their villages. The ones who fled were enclaved in various locations in the north, including camps and village neighbourhoods,[124] some of whom were later expelled to the south, in retaliation for the mistreatment of TCs remaining there.[125] Furthermore, approximately 6,000 Greek Cypriot prisoners of war were later released to the south in exchange for TC prisoners. Finally, the Vienna III Agreement signed by the leaders of the two communities in 1975 allowed voluntary and assisted movement of GCs and TCs from both sides of the island.[126]

As a result of the 1974 military intervention, almost 162,000 GCs including other minorities were displaced. In 1975, approximately 25,000 GCs were resettled in houses abandoned by TCs in the south. TCs were also moved to areas under Turkish control for safety.[127] By the end of 1975, apart from only 130 elderly persons, all TCs had made their way north. The number of TCs displaced was 48,000 with another 12,000 who had already been displaced in the 1963-64 period living in enclaves in the north. Thus, the total number of displaced TCs originally from the south is almost 60,000.[128] However, by contrast with the case of displaced GCs, there were enough houses belonging to GCs in the north to accommodate all TCs.[129] Thus, the displacement routes in Cyprus span a period of more than 50 years, with some people displaced more than once, reducing the severity of humanitarian concerns, dire conditions or severe abuses and hardship in many cases. Furthermore, considering the existence of negative peace, transformation of relationships of the communties is of utmost importance to achieve positive peace.

[123] Ibid
[124] Ibid 8
[125] Ibid 9
[126] See ibid 9
[127] Ibid
[128] Numbers vary between 45,000 and 55,000 as previously stated.
[129] Gürel, Hatay and Yakinthou, 'Displacement Report 5' (n 4) 10

3. Recent Research on Perceptions of the IDPs and "the Acceptance of Cohabitation" in Cyprus

The implications, for Cyprus, of inclusive processes such as those in Tunisia and Colombia were considered in the previous Chapter. In a recent survey, Psaltis, Cakal, Loizides and Bonnenfant illustrate that the inclusion of displaced persons in the Cyprus peace process could positively influence the outcome of a future settlement depending on the extent of consultation on property issues and the right to return.[130] The authors support the view that the years of "peace talks have been wasted, with sides discussing technical and top-down criteria on the allocation of disputed properties rather than engaging directly with property owners/occupants".[131] A comprehensive census survey of preferences among all displaced persons could, at least, indicate how many GCs want to have their properties restored and where this could address and ease the insecurities of TCs in this regard.[132] Since it is primarily the GCs who emphasize return to their properties, Psaltis, Cakal, Loizides and Bonnenfant present findings on GC IDPs' relationship to their lost properties and their intention to return in case of a solution. The findings show that if the GC IDPs have the first say about what to do with their properties, this would bring a Yes vote in a referendum for the solution of the Cyprus problem. The survey also shows that in areas which would fall under the administration of the TC constituent state, only a small minorty of GC IDPs would request restitution of their properties. This point is important for TCs as they are concerned for losing demographic majority in their own constituent state.[133]

Other recent research including both Turkish and Greek Cypriots' perceptions on cohabitation which investigates the potential impact of TJ interventions and intergroup contact, acknowledges the lack of empirical research about whether GCs (including the IDPs) would be willing to live as neighbours with "settlers" and TCs.[134] Two surveys, carried out in the GC and TC communities in this regard, show that "GCs are more likely to accept a TC neighbour than a TS [Turkish Settlers]

[130] Psaltis, Cakal, Loizides and Bonnenfant, 'Internally Displaced Persons and the Cyprus Peace Process' (n 5) 149
[131] Ibid 150
[132] Ibid 150
[133] Ibid 150
[134] Psaltis et al, 'Transitional Justice and Acceptance of Cohabitation' (n 4) The authors refer to those who came from Turkey after 1974 intervention.

neighbour".[135] As noted by the authors, this finding is consistent with the official narrative of the conflict in the GC community that revolves around "the Turkish invasion and occupation". This is linked to the feeling of insecurity by GCs where the typical discourse includes comments such "our problem is not with TCs but Turkey" or "we used to live together with TCs and we can do it again in case of a solution as long as Turkey withdraws its troops from Cyprus."[136] However, among those who experienced displacement in 1974, "a retributive sense of justice is expressed by wanting to inflict harm on perpetrators – making them beg for forgiveness, withholding amnesty, assigning harsh punishments or seeking compensation, not as a means to restore relations with TCs or Turkey but as another means of inflicting a cost on the main perpetrator (Turkey)".[137] The authors note that they tend not to focus on a "more pragmatic, and restorative sense of justice expressed in forgiveness conditioned on giving testament in a truth and reconciliation committee".[138] The survey also shows that "the more GC participants adhere to notions of retributive justice, the less they are ready to live together with Turkish settlers."[139] This is a reflection of one-sided victimization which sees TSs as the enemy (from Turkey).[140] On the other hand, this part of the research does not specifically reflect perceptions and the sence of justice on how the issue of property rights could be resolved.

Levels of acceptance by the four subcategories of TCs (indigenous IDPs, indigenous non-IDPs, mixed background, Turkish settlers) do not differ significantly. In other words, these backgrounds do not significantly affect preparedness for cohabitation with GCs, indicating that in a future referendum TSs are unlikely to vote en bloc against a solution as often assumed by GCs.[141] Perceptions of TJ are similar to that of GCs; i.e. the more TC participants adhere to notions of retributive justice, the less they are ready to live together with GCs.[142]

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[135] Ibid 2
[136] Ilke Dagli, 'Securitization of Ethnic Communities in Conflict Environments and its Implications for Peace-Building: The Case of Cyprus' (PhD dissertation University of Warwick, 2016)
[137] Psaltis et al, 'Transitional Justice and Acceptance of Cohabitation' (n 4) 14
[138] Ibid
[139] Ibid
[140] Ibid
[141] Ibid 16
[142] Ibid

Other research confirms the conclusion of Psaltis et al survey that intergroup contact has an impact on the reduction of prejudice.[143] Observing the positive effects of contact for all groups surveyed, the authors suggest the need to implement additional confidence building measures, such as contact schemes, new crossing points in isolated areas of the island, school visits and dialogue workshops.[144] They further note that contact and dialogue workshops could be the topic of transitional justice itself.[145] IDP/settlers inclusion is also key to reconciliation with respect to land disputes, where localized consultation mechanisms could be established as well.[146] According to Psaltis et al, local commissions could address disputes between owners and current users for amicable win-win arrangements at individual level with expanded options available to all individuals affected by the conflict.[147]

Thus, the research shows that potential returnees are likely to regard TCs as their neighbours than those less likely to returnand that, coupled with inclusive processes, intergroup contact is important to further tolerance.

Before turning to GC cases against Turkey, the following sub-section examines the approach of the ECtHR as a regional adjudicator of human rights in property restitution cases in post-communist countries.

III. The European Convention on Human Rights and the Restitution of Property

As explored above, property restitution has been a widely debated issue for post-communist transitions in Central and Eastern Europe.[148] In the Communist era, properties were often takn without compensation or with compensation that fell far below market value. Individuals were also sometimes forced to abandon their properties by coercive measures and those who emigrated later found that those they left behind were confiscated. Therefore, following the fall of communism many

[143] See Thomas F Pettigrew and Linda R Tropp, 'A Meta Analytic Test of Intergroup Contact Theory' (2006) 90 (5) Journal of Personality and Social Psychology 751
[144] Psaltis et al, 'Transitional Justice and Acceptance of Cohabitation' (n 4)18
[145] Ibid
[146] Ibid
[147] Ibid
[148] Blacksell and Born (n 70) 178

people, unjustly deprived of their properties, sought restitution or compensation,[149] often relying on Article 1 of Protocol 1 of the ECHR.

The Court's case-law on restitution in transitional cases can be examined under the temporal and material scope of the Convention.[150] In the first line of cases, the Court often rejected claims for violation of property rights as a result of "anomalous" situations occurring during communist regimes on jurisdictional grounds, and the non-retroactive character of the Convention and its Protocols,[151] It further referred to the principles of international law on interpretation of treaties and state responsibility where a State's conduct is examined according to the law in force at the time without the treaties interpreted retroactively.[152] In other words, the Convention and its Protocols do not apply to an act which occurred prior to the date upon which they came into effect for the respondent State. As Proukaki asserts, the provisions of the Convention and its Protocols are not intended to remedy past injustices[153] and since the Convention did not come into force in the former communist states until several years after the fall of communism, many transitional justice claims were excluded from the Court's jurisdiction. However, the Court makes a distinction between "continuing" and "instantaneous" acts. For example, in German cases, the claims were also rejected on temporal grounds.[154] In *Blecic,* the Court concluded that the deprivation of the right to property was an "instantaneous" act, and that since the applicant had been deprived of his property by the Supreme Court of Croatia's decision in 1996, prior to Croatia ratifying the ECHR in 1997, the case was rejected.[155] However, the Court's approach in these cases differs from the Cyprus cases; especially from the landmark decision in *Loizidou v Turkey* where it held that the applicant had been refused access to her land since 1974 and had lost all control over it.[156] Referring to the distinction between "continuing" and "instantaneous" acts, the Court concluded that the violation in question had the

[149] Allen, 'Transitional Justice and the Right to Property' (n 35) 413
[150] Sweeney (n 51) 99, 101
[151] Allen and Douglas (n 67) 212
[152] See Vienna Convention on Law of Treaties Article 28, International Law Commission Draft Articles on State Responsibility Article 134; see also Sweeney (n 40) 99; see also Allen 'Transitional Justice and the Right to Property' (n 35) 416
[153] Proukaki (n 1) 705
[154] See for example *Weidlich and others v Germany* Apps nos 18890/91, 19048/91, 19049/91, 19342/92 and 19549/92 Admissibility (4 March 1996)
[155] *Blecic v Croatia* App No 59532/00 Merits (8 March 2006) paras 77, 79, 81
[156] Para 63 of the judgment

former rather than the latter character.[157] As Loucaides states, in most of the cases in the post-communist context by contrast, the acts in question have been considered "instantaneous".[158] The Court excluded *ratione temporis* the complaints of individuals who sought restitution and, in this regard, Gross states that while the Convention cannot mend the past, it can reinforce democracy which ex-Communist states already have in place.[159]

However, it would not be wrong to state that, to avoid further instability, the Court has been reluctant to provide a forum for hearing individual complaints about past injustices.[160] In other words, it attempts to provide a balance between the past and the future by giving priority to "stability". However, the main reason for the rejection of such claims has much more to do with the fact that a state, as a matter of justice and basic legal principle, cannot be held responsible for obligations before the point at which it agreed to undertake them, and also because it would otherwise massively increase the Court's case load.

In the second line of cases - those relating to "the material scope of the Convention" - the Court's jurisprudence can be summarised in *Kopecky v Slovakia*[161] where it stated:

> *Article 1 of Protocol No.1 cannot be interpreted as imposing any general obligation on the Contracting States to restore property which was transferred to them before they ratified the Convention. Nor does Article 1 of Protocol No. 1 impose any restrictions on the Contracting States' freedom to determine the scope of property restitution and to choose the conditions under which they agree to restore property rights of former owners.*[162]

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[157] Paras 41, 60-63 of the judgment; See also *Papamichalopoulos v Greece* App No 14556/89 Merits (24 June 1993)

[158] Loukis G Loucaides, 'Is the European Court of Human Rights Still a Principled Court of Human Rights after the Demopoulos case?' (2011) 24 (2) Leiden Journal of International Law 435

[159] Aeyal Gross 'Reinforcing the new democracies: the European Convention on Human Rights and the former communist countries - a study of the case law' (1996) 7 (1) EJIL 89,102

[160] See Allen and Douglas (n 67) 230; see also Proukaki (n 1) 708

[161] *Kopecky v. Slovakia* App No 44912/98 Merits (28 September 2004)

[162] Para 35(d); see also *Jantner v Slovakia* App No 39050/97 Merits (4 March 2003) para 34; see also *Gratzinger and Gratzingerova v the Czech Republic* App no 39794/98 Admissibility (10 July 2002) paras 70-74, where the Court stated that the Contracting States enjoy a wide margin of appreciation for the exclusion of certain categories of former owners in this respect. See also *Beshiri and others v. Albania* App no 7352/2003 Merits and Just Satisfaction (22 August 2006) para 81

In other words, it is outside the material scope of the Convention for it to provide restitution for confiscated property and to impose an obligation on states to create a framework for such claims. In this regard, Sweeney states that since "there is no Convention right to this form of transitional justice" a form of reparatory justice is denied.[163]

On the other hand, when the Contracting States decided to establish procedures for restitution, the Court supervised their application. While such schemes were not universally accepted, and were controversial in terms of their contribution to a peaceful transition or to economic good and might be considered to be in conflict with the Article 1 Protocol 1 rights of current owners, their consistency with the principles of the Convention was nevertheless reviewed by the ECtHR.[164]

In *Pincova and Pinc v Czech Republic,*[165] the Court accepted that restitution laws pursue the legitimate aim of safeguarding the lawfulness of legal transactions and protecting the country's socio-economic development.[166] In other words, the Court not only accepts that restitution laws are reparatory, but that they are also forward-looking.[167] Concluding that the applicants had to bear an excessive burden which has upset the fair balance between the demands of the general interest and protection of the right to the peaceful enjoyment of possessions, the Court found a violation of Article 1 of Protocol.[168]

After the fall of communism in 1990, the Bulgarian Parliament enacted the Restitution Law 1992 to provide justice to those whose property had been nationalised without compensation. According to this regulation, if the property concerned had been nationalized and acquired by third persons by virtue of their position in the Communist party or through abuse of power, the former owners or their heirs could still recover it. The applicants in *Velikovi and Others* were deprived of their property as a result of proceedings brought against them under this Law by

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[163] Sweeney (n 51) 102

[164] Ibid 103; see Allen and Douglas (n 67) 210; see also PACE Resolution 1096 (1996) para 10 where emphasis is on the rights of current owners who acquired the property in good faith or the rights of tenants who rented the property in good faith and on not harming the progress of democratic reforms; see also Teitel (n 98) 129 where she stated that the restitution policies aimed at providing reparation are not only remedial measures or backward looking but also play a role in the constrıction of society based on free market economics.

[165] *Pincova and Pinc v Czech Republic* App no 36548/97 Merits and Just Satisfaction (5 November 2002)

[166] Para 58; See also *Zvolsky and Zvolska v Czech Republic* App No 46129/99 (12 November 2002) para 67

[167] Sweeney (n 51) 104

[168] See paras 60-64

the pre-nationalisation owners or their heirs. The Court found a violation in two applications stating that the appplicants, as well as their heirs, took advantage of their privileged position or acted unlawfully to acquire property in a totalitarian regime and concluded that the punitive element in the restitution scheme was legitimate.[169]

To sum up, while the Court does not require restitution schemes, where they have been provided by the Contracting States, it subjects them to Convention standards. It also allows States to exclude certain categories from their scope[170] and it permits a wide margin for states in which local solutions can flourish.[171] Pogany argues that this has allowed the Court to avoid addressing sensitive political questions of contested historical memory[172] while, according to Sweeney, "[t]he wide margin of appreciation seen in the ECtHR's exclusion cases, which consequently forestalls substantive discussion of discrimination, can be seen as another attempt to avoid being seen to 'do' transitional justice."[173] However, often being the subject of considerable media scrutiny and political comment, the importance of the Court for transitional justice cannot be underestimated since it could have an impact on "national memorialisation".[174] Although the Court does not make a decisive contribution to transitional cases where states choose to initiate restitution schemes, it still has a role in ensuring that the process is concluded and that procedural justice is maintained.[175] Thus, on the assumption that once established they cannot be exempted from the guarantees of the Convention including Article 6(1),[176] it imposes positive obligations on states to implement restitution fairly.[177]

As Sweeney puts it, since the Court allows a wide scope for transitional states and their circumstances, "the potential for outright conflict between human rights norms and the motivations behind restitution" is reduced.[178]

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[169] *Velikovi and others v. Bulgaria* (Apps Nos 43278/98, 45437/99, 48014/99, 48380/99, 51362/99, 53367/99, 60036/00, 73465/01, and 194/02) Merits (15 March 2007) para 172
[170] See *Kopecky v Slovakia* (n 161), *Beshiri and Others v Albania* (n 162) para 96
[171] Sweeney (n 51)110
[172] Istvan Pogany 'International Human Rights Law, Reparatory Justice and the Re-ordering of Memory in Central and Eastern Europe' (2010) 10 (3) HRLRev 397, 401
[173] Sweeney (n 51) 110
[174] Pogany (n 172) 428 (Pogany compares the Human Rights Committee's revision of restitution schemes under the ICCPR to the ECtHR)
[175] Sweeney (n 51)119
[176] *JS & AS v Poland* App no 40732/98 Merits (13 December 2000)
[177] *Paduraru v Romania* App no 63252/00 Merits (1 December 2005) paras 92-93; *Beshiri and others v Albania* para 96; *Nuri v Albania App no12306/2004 Merits and Just Satisfaction* (3 February 2009) para 34
[178] Sweeney (n 51) 126

IV. The European Court of Human Rights and the Property Dispute in Cyprus

A. The Cases

As already indicated, following partition of Cyprus in 1974, numerous cases have come before the European Commission of Human Rights and the ECtHR in Strasbourg.[179] But this section is concerned only with those relating to the issue of abandoned Greek property in the north, especially the landmark judgments in *Loizidou,*[180] *Xenides-Arestis,*[181] and *Demopoulos and others.*[182]

The applicant in *Loizidou v Turkey* grew up in Kyrenia in northern Cyprus and moved with her husband to Nicosia when she married in 1972. She claimed to be the owner of a number of plots in Kyrenia and that, prior to the Turkish intervention, work had commenced on one of these to build flats intended for use as her family home. Although the applicant originally also claimed violation of Articles 3, 5(1) and 8 ECHR, arising from her temporary detention during a protest in northern Cyprus, the complaint at Strasbourg was pursued only in relation to the alleged violations of Article 1 of Protocol 1 (the right to peaceful enjoyment of possessions) and Article 8 (the right to respect for private and family life, home and correspondence) on the grounds that she had been, and continued to be, prevented by Turkish forces from returning to her property in Kyrenia.[183]

The majority of the Court held that Article 1 of Protocol No. 1 ECHR had been breached because of the refusal of access by the TC authorities leading to the complete loss by the applicant of control over her property. The Court noted that the interference was unwarranted and it concluded that the Turkish Government did not explain how the need to rehouse displaced TC displaced could justify the violation. However, since Mrs Loizidou had never occupied the land concerned as her 'home', it was held that there had been no violation of Article 8 ECHR. By contrast, the dissenting minority took the view that it was not possible to separate Mrs Loizidou's circumstances from the wider dispute on the island, and that since she remained the owner of the property, there had been no unlawful dispossession. The dissentients

[179] See *Cyprus v Turkey* Apps Nos 6780/74, 6950/75 Commission Report (10 July 1976); *Cyprus v Turkey* App No 8007/77 Commission Report (4 October 1983)
[180] *Loizidou v Turkey* App No 15318/89 Merits (18 December 1996) 9
[181] *Xenides-Arestis v Turkey* App No 46347/99 Merits (22 December 2005); *Xenides-Arestis v Turkey* App No 46347/99 Just Satisfaction (7 December 2006)
[182] *Demopoulos and others v Turkey* Apps Nos 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04, 21819/04 Admissibility (1 March 2010)
[183] *Loizidou v Turkey* (n 180) paras 11-12, 26.

also concluded that, since it could not be said that Turkey was solely responsible for the Cyprus problem, the applicant's loss could not be solely attributed to the respondent state.[184] The issue of just satisfaction was reserved.

The *Loizidou* judgment opened the door to many other similar claims.[185] In *Xenides-Arestis v Turkey* the applicant – who owns property in Famagusta including a plot with a shop, a flat, and three houses, one of which was her home – claimed she was forced by the Turkish military authorities to leave Famagusta with her family in August 1974 and, since then, had been prevented from accessing, using or enjoying her property, which had also been fenced-off for military purposes. Amongst other objections to the admissibility of the application, Turkey claimed that, since the applicant had not applied to the Immovable Property Determination, Evaluation and Compensation Commission (IPDECC), established in northern Cyprus in response to the *Loizidou* case by Law No 49/2003 on 30 July 2003, she had failed 'to exhaust domestic remedies' as required by Article 35(1) ECHR. However, the ECtHR rejected this claim and held, for the following reasons that, because the remedy provided by Law No 49/2003 did not satisfy the requirements of Article 35(1) ECHR, it could not be regarded as "effective" or "adequate" with respect to the applicant's complaints. First, the compensation on offer was limited to damages regarding pecuniary loss for immovable property, there was no provision for movable properties or for non-pecuniary damage, and restitution was not possible. The compensation mechanism alone could not, therefore, be considered as 'a complete system of redress regulating the basic aspect of the interferences complained of'.[186] Nor did the Law address the applicant's complaints under Article 8 and 14 (the prohibition of discrimination) ECHR. The Court noted that the legislation only referred expressly to the retrospective assessment of compensation. But whether it applied to applications filed before its enactment and entry into force was unclear. Finally, expressing concern that most of the Commissioners on the IPDECC were living in homes owned, or built on, GC property, the ECtHR held that an international component would enhance the Commission's integrity and credibility. In summary, the ECtHR concluded that the Commission could be

[184] Dissenting Opinion of Judge Bernhardt joined byJudge Lopes Rocha 25-6; Dissenting Opinion of Judge Jambrek 32-3; Dissenting Opinion of Judge Petiti 35-6; Dissenting Opinion of Judge Gölcüklü 40-2

[185] Robin C A White, 'Tackling Political Disputes through Individual Applications' (1998) EHRLR 61, 71

[186] *Xenides-Arestis v Turkey* Application No 46347/99 Admissibility (14 March 2005) 44-5

considered an effective remedy if there were appropriate provisions regarding the status of its members, claims under Articles 8 and 14 ECHR were addressed, compensation for non-pecuniary losses and for movable as well as immovable property was provided, restitution was permitted, and, in addition to the retrospective assessment of compensation, the process applied to complaints filed before the legislation entered into force.

The Court also found that the complete denial of the applicant's right to respect for her home since 1974 constituted a continuing violation of her rights under Article 8 ECHR.[187] It was further held that "the respondent State must introduce a remedy which secures genuinely effective redress for the Convention violations identified in relation to the present applicant as well as with respect to all similar applications pending before it" and that "such a remedy should be available within three months from the date on which the present judgment is delivered and redress should be afforded three months thereafter".[188] In addition, the parties were invited to submit their written observations on the issue of pecuniary and non-pecuniary damages, also within three months. Pending the implementation of the relevant general measures by the respondent state, the Court adjourned its consideration of all applications deriving from the same systemic source.[189]

As a result of this judgment, the TRNC enacted a new compensation law, the 'Law for the Compensation, Exchange and Restitution of Immovable Properties which are within the Scope of Sub-paragraph (B) of Paragraph 1 of Article 159 of the Constitution' (Law No 67/2005, the IPC law). Entering into force on 22 December 2005, this abolished the IPDECC, which had only received a total of three applications, and established the IPC instead. The legislation states that its purpose is:

> *to regulate the necessary procedure and conditions to be complied with by persons in order to prove their rights regarding claims in respect to movable and immovable properties within the scope of this Law, as well as, the principles relating to restitution, exchange of properties and compensation payable in respect thereof, having regard to the principle of and the provisions regarding protection of bizonality . . . without prejudice to any property rights or the right*

[187] *Xenides-Arestis v Turkey* Merits (n 181) paras 19-22
[188] Ibid para 40
[189] Ibid para 50

to use property under the Turkish Republic of Northern Cyprus legislation or to any right of the Turkish Cypriot People which shall be provided by the comprehensive settlement of the Cyprus Problem.[190]

The Court welcomed the steps taken to establish a mechanism to redress violations of Convention rights in respect of all similar applications pending before it and, in its admissibility decision of 14 March 2005 and the judgment on the merits of 22 December 2005, noted that the new compensation and restitution mechanism, in principle, met Convention requirements. It also recognised that, because the parties did not agree about what would constitute just satisfaction, it was not possible for all relevant issues regarding the effectiveness of the remedy to be addressed in detail. Since the merits had already been decided, the Court rejected the Turkish government's argument that the applicant should be required to apply to the new Commission in order to seek reparation for damages. It therefore proceeded to determine the compensation to which the applicant was entitled in respect of losses arising from the denial of access and loss of control, use, and enjoyment of her property between 22 January 1990 (the date Turkey accepted the compulsory jurisdiction of the Court), and the date of the application. As a result, €800,000 for pecuniary, and €50,000 for non-pecuniary damage were awarded.[191]

By November 2009, 433 cases had been lodged with the IPC, 85 of which had been concluded, mostly by friendly settlement. In four cases, the IPC ordered restitution and compensation, in two exchange of property was agreed, and in one the applicant accepted restitution when the Cyprus problem was eventually resolved. Compensation was awarded in more than 70 cases, some 361,493 square metres of property were restored, and approximately €47 million Euros were paid in damages.[192]

The case of *Demopoulos and others*, lodged with the ECtHR between 1999 and 2004 before Law No 67/2005 was enacted, provided a further opportunity for the compliance of these new arrangements with the ECHR to be determined at Strasbourg. The applicants claimed that, since August 1974, they had been prevented from having access to, and from using and enjoying, their homes, properties and

[190] Article 3
[191] *Xenides-Arestis v Turkey* Just Satisfaction (n 181) paras 36-39
[192] *Demopoulos and others v Turkey* Admissibility (n 182) para 40

possessions in northern Cyprus. Reiterating its finding in *Cyprus v Turkey* that seeking to correct wrongs imputable to a respondent state does not amount to indirect legitimation of a regime unlawful under international law,[193] the Court held that, notwithstanding the limited provision for restitution, the IPC constituted an effective domestic remedy.[194] It is said that international law and the Court's judgments had been acknowledged by the authorities of the TRNC, particularly the Constitutional Court which interpreted the IPC law in line with the ECHR.[195] According to the ECtHR limited provision for restitution was not fatal to the effectiveness of the remedy because:

> *At the present point, many decades after the loss of possession by the then owners, property has in many cases changed hands, by gift, succession or otherwise; those claiming title may have never seen, or ever used the property in question . . . The losses thus claimed become increasingly speculative and hypothetical. There has, it may be recalled, always been a strong legal and factual link between ownership and possession . . . and it must be recognised that with the passage of time the holding of a title may be emptied of any practical consequences.*[196]

While the Court held that this did not mean that the applicants had lost ownership of their properties, it would not be possible to oblige the respondent state to restore the property to its lawful owners – and it would be unrealistic to expect it to provide the applicants access, and to obtain full possession – irrespective of who was living there or whether the property was in a militarily sensitive zone or used for vital public purposes. If, as in such circumstances, the nature of the violation did not allow for restitution, compensation could, therefore, be permitted as an alternative remedy.[197] Although the applicants argued that this would enable Turkey to benefit from its illegal occupation of the northern part of the island, the Court stressed that property is a material commodity, can be valued and compensated for in monetary terms, and

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[193] Ibid para 96
[194] Ibid para 103
[195] *Ulusal Birlik Partisi ile KKTC Cumhuriyet Meclisi* [National Unity Party v TRNC National Assembly] AM 3/2006, D. 3/2006 (21 June 2006). Reference to this Constitutional Court decisionof the TRNC was made at paras 38-39 *Demopoulos and others* Admissibility (n 182)
[196] *Demopoulos and others* Admissibility (n 182) para 111
[197] Ibid paras 114-115; see also *Papamichalopoulos and Others v Greece* Application No 14556/89 Just Satisfaction (31 October 1995) para 34; *Iatridis v Greece* App no. 31107/96 Merits and Just Satisfaction (25 March 1999) para 33

that if damages were paid in line with the Strasbourg case law, there would in general be no unfairness between the parties. In addition, it held, that an exchange of property is another form of redress in this respect. It added that there was no precedent in the Strasbourg case-law supporting the claim that 'a Contracting State must pursue a blanket policy of restoring property to owners without taking into account the current use or occupation of the property in question', and that it should be ensured that redress provided for old injuries would not create disproportionate new wrongs. Although the applicants claimed that, under the new mechanism, only a small proportion of property would be restored, the ECtHR stated that this did not undermine the effectiveness of the IPC as a remedy. It, therefore, concluded, that coupled with the admissibility decision in *Xenides-Arestis*, it had already been established that the lack of any provision for restitution was a shortcoming which the new Law addressed.

Affirming that awards made under Law No 67/2005 should not be automatically considered unreasonable, the ECtHR also rejected the applicants' arguments regarding the 'accessibility and efficiency' of the mechanism and their claims that the IPC was not sufficiently independent and impartial. It concluded, therefore, that Law No 67/2005 'makes realistic provision for redress in the current situation of occupation that is beyond this Court's competence to resolve' and that applicants are not obliged to apply to the IPC as they may, alternatively, 'await a political solution'.[198]

B. Remarks

As was the case in *Loizidou*, the decision in *Demopoulos and others* was important both with respect to international and human rights law. According to Loucaides, this was the first time that the Court examined the effectiveness of a remedy established under such unique circumstances.[199] The Court's decision in *Demopoulos* was not surprising since it had already been signalled in *Xenides-Arestis*.[200] Its reasoning was

[198] *Demopoulos and others* Admissibility (n 182) para 128

[199] See Loucis G Loukaides, 'Is the European Court of Human Rights Still a Principled Court of Human Rights after the Demopoulos case?' (2011) 24 (2) Leiden Journal of International Law 435, 434 (The author stated that the remedy was established by "an occupying country for alleged violations of human rights committed by that country in the area where the proposed remedy established."

[200] See also Skoutaris (n 7) 724

mainly based on the fact that the political climate had improved, the green line partitioning the island was no longer closed, the existence of "passage of time", and the *Namibia* principle.[201] Loucaides argues that the Court was wrong both with respect to its reasoning and its conclusion because the decision was inconsistent with its previous case-law, it misapplied the *Namibia* exception and other principles of international law especially by disregarding the right of *restitutio in integrum*, it relied on wrong comparisons by giving weight to authorities of an illegal occupying military regime, it disregarded the policy of Turkey towards rights of GCs, it accepted the independence and impartiality of organs of the regime in the occupied area, and it was wrong in its findings as they were inconsistent with the true facts and objectives of human rights because it considered the passage of time to have an effect on holding title to property.[202] The *Namibia* exception was an issue raised by the parties in both *Loizidou* and *Demopoulos*. The "*Namibia principle*", in brief, provides that even if the legitimacy of the administration of a territory is not recognised by the international community, "international law recognises the legitimacy of certain legal arrangements and transactions in such a situation, [...] the effects of which can be ignored only to the detriment of the inhabitants of the [t]erritory".[203] In *Loizidou,* the Court did not find it necessary to elaborate on the lawfulness of legislative and administrative acts of the TRNC, but concluded that the applicant could not be deemed to have lost title to her property as a result of Article 159 of the 1985 Constitution of the TRNC. However, in *Demopoulos*, when the same principle came into play once again, the Court, this time, stated that "the mere fact that there was an illegal occupation does not deprive all administrative or putative legal or judicial acts therein of any relevance under the Convention". It concluded that it would not be consistent to deny or regard the administrative, civil or criminal law measures of TRNC as having no lawful basis. The Court added that it is important to guarantee that "individuals continue to receive protection of their rights on the ground on a daily basis". In fact, one can ask whether the Court changed its

[201] The Court again makes reference to this principle as it did in Loizidou. It provides that even if the legitimacy of the administration of a territory is not recognised by the international community, "international law recognises the legitimacy of certain legal arrangements and transactions in such a situation, ... the effects of which can be ignored only to the detriment of the inhabitants of the [t]erritory" (Advisory Opinion of the International Court of Justice in the Namibia case (Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), (1971) ICJ Reports 16, para 125)

[202] Loucaides (n 158) 436

[203] See para 93 of the *Demopoulos and others* (n 182)

stance only because of these legal points. It may well have been influenced by the backlog of property cases pending before it.[204] This is evident from the statement: "[.....] individuals claiming to own property in the north may, in theory, come to the Court periodically and indefinitely to claim loss of rents until a political solution to the Cyprus problem is reached."[205] Loucaides criticised the Court stating that its decision amounted to “a serious setback" to its mission under the Convention.[206] In this respect, it can be said that, in *Loizidou,* the Court's approach was "individual justice" centred, whereas in *Demopoulos* it was "European public order" centred as a result of the long-standing workload of the Court not only with respect to 1,400 Greek Cypriot cases, but also the crisis faced by the Court in general.[207]

But did the Court build on or back-track from its previous case law?[208] It had not reversed its previous case law since it also approved the illegal expropriation of GC properties under Article 159 of the TRNC Constitution.[209] It stated that the GCs did not have to resort to the IPC and that they could await a political solution. In other words, it was of the opinion that GCs could not be forced to resort to the remedy established, but considered it a mechanism for those who wished to apply for remedies. On the other hand, controversially, the Court in *Loizidou* did not accept Turkey's argument regarding the "doctrine of necessity" as a justification for the acts of the TRNC: It stated that Turkey could not explain how the need to rehouse displaced TC refugees in the years following 1974 could justify disregarding the applicant’s property rights in the form of a total and continuous denial of access and a purported expropriation without compensation.[210] However, in *Demopoulos,* this argument, in fact, was accepted by the Court implicitly. On the other hand, reading the Court's reasoning carefully, it can be said that it did not accept that the applicants' rights were completely disregarded. But again, one can ask, since the border dividing the island was closed at the time of *Loizidou*, how could the situation have been different?

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[204] It is stated that there were 1,400 cases brought before the Court as a result of the *Loizidou* case; see Sokutaris (n 7) 725
[205] Para 111 of decision
[206] Loukaides (n 158) 436
[207] See Steven Greer and LuziusWildhaber, ‘Revisiting the Debate about 'constitutionalising' the European Court of Human Rights’, (2012) 12 (4) HRLRev 655
[208] Skoutaris (n 7) 727
[209] Ibid
[210] Para 64 Merits

According to Proukaki, *Demopoulos* deviates from the established ECtHR jurisprudence and arbitrarily undermines the significance of restitution in the context of Cyprus. She notes that the political nature of the Cyprus problem is undisputed. However, she adds that it is also undisputed that it remains firstly a problem that is subject to international human rights and humanitarian law. Accordingly, she is of the opinion that "the realpolitik, to which the ECtHR refers, provides an excuse to be exempted from principles of international law", in particular to the rules on state responsibility dictating cessation of the wrongdoing, i.e. restitution, and, when this is not possible, compensation for any loss incurred. She further asserts that the political nature of the situation in Cyprus cannot bring it outside the realm of law, adding that international human rights law protects the individual from arbitrary state action in all circumstances. She accepts that the passage of time cannot be a legitimate reason for exempting a state from legal scrutiny so as to allow for legitimization of its arbitrary or discriminatory refusal to allow the entry of the individual to his or her "own country". Noting that a state cannot benefit from its wrongdoing, she states that the Court should have ensured cessation of the violation and safeguarded the rights of the dispossessed against state abuse. Thus according to her, the Court should have held that the duty to exhaust domestic remedies through the IPC was inoperable as a result of the continuing serious violations committed by Turkey and that the "real access to justice" issue was to rectify a violation. However, both victims' interests and the the society as a whole should be balanced and these interests should not be exchanged for the sake of the other by the general and abstract idea of "rectifying violations". Otherwise, as the Strasbourg Court stated, the redress applied to those old injuries could create disproportionate new wrongs.

As indicated in Chapter 2, there is real and continuing resentment between the two communities in Cyprus regarding the past. For its part, the resentment of GCs may be characterized as centring on the TC enjoyment of GC property, and TC resentment may be characterized as centring on the complaint that GCs silenced them before 1974, especially in the 1960s. However, considering TCs' concerns about losing demographic majority in their own constituent state, supporting an absolute right to return home could undermine the possibility of lack of a solution at large as illustrated by surveys on perceptions of communities and analysis on the outcome of

Annan Plan Referendum.[211] Proukaki's assessment that the Cyprus problem remains, in the first place, a problem subject to international human rights and humanitarian law, would however undermine its political nature. In any case, even if the violations of human rights are rectified as Proukaki suggests, the reasons underlying the conflict would remain and would cause further political consequences undermining the possibility of reconciliation. Contrary to what Proukaki claims, where, as in the case in Cyprus, transitional justice is required, remedies must be holistic and a variety of remedies should be used. Tzevelekos notes that, by allowing the payment of compensation instead of restitution, the Court, in fact, proceeded to assess the legitimacy and the necessity of the reasons allegedly justifying the deprivation of property.[212] However, it also clearly stated that "allowing the respondent State to correct wrongs imputable to it does not amount to an indirect legitimisation of a regime unlawful under international law."[213] In other words, the Court did not assess the reasons justifying the deprivation of property, but attributed responsibility to Turkey instead. Tzevelekos further states that nothing justifies shifting from restitution to compensation in the case of forced displacement arising from unlawful use of force leading to occupation where such a displacement would prevent the Court from continuing with its habitual test of proportionality.[214] In this respect, referring to *Saghinadze and others v Georgia,*[215] he asserts that restitution is the optimal form of reparation in case of unlawful dispossession.[216] However, the circumstances of *Saghinadze and others* are far from similar to those of *Demopoulos and others*. The key point in the former was the responsibility of the state not to leave the IPDs without accommodation. Furthermore, even under those circumstances, it can be seen from the Court's judgment that restitution of property is not absolute and that the respondent State could also satisfy the applicant by providing with other accommodation or by paying reasonable compensation.[217] Furthermore, the property in question in *Saghinadze* belonged to the State, whereas in *Demopolous,* as

[211] See Chapter 4, 117; Chapter 3, 78-9
[212] Vassilis P Tzevelekos 'Reparation of the Rights to Property and Home of Displaced Persons Arising from Armed Conflict under the European Convention of Human Rights' in Elena Katselli Proukaki (ed) *Armed Conflict and Forcible Displacement, Individual Rights under International Law* (Routledge 2018) 102
[213] Para 96 of the decision
[214] Tzevelekos (n 212) 107
[215] App no 18768/05 Judgment of 27 May 2010
[216] Tzevelekos (n 212) 106
[217] See para 160 of the judgment.

mentioned previously, the Court referred particularly to the fact that some thirty five years had passed since the applicants lost possessions and that other people had established claims over those properties. In other words, the Court, in fact, attempted to balance the past and the future by giving priority to "stability" as it did in other transitional cases examined above. A point of agreement with Tzevelekos is that as the extract quoted above indicates, the Court aimed at protecting its own interests as a result of its workload.[218]

Gross, also criticises the decision in *Demopoulos and others*. He argues that leaving the context of occupation aside, the Court ignored international humanitarian law, namely Article 49(6) of the Fourth Geneva Convention, in its entirety. Despite having referred to the north Cyprus territory as occupied, Gross states that it left Greek Cypriots, settled in the properties whose rights were violated, without protection against the occupying power under the law of occupation.[219]

In the final analysis, the Court's approach cannot easily be separated from the political aspects of the issue. But nor can it be said that the result is particularly problematic since the Court nevertheless accepted a remedy provided for those who want to pursue their rights prior to a solution of the Cyprus problem. Supporting an absolute right to return home might create a burden which could result in a worsening of the situation and/or relationship between the two communities. In this respect, understanding the attitudes of the displaced could play a key role for reconciliation.[220] As Psaltis, Cakal, Loizides and Bonnenfant argue, inclusion of displaced persons in the process could positively influence the outcome of a future settlement depending on the degree of consultation on property issues and the right to return.[221]

V. Conclusion

In this Chapter, I attempted to examine the right to return in international law, property restitution and the implementation of restitution schemes in several countries. Although it is accepted that there is a general "right to return" in

[218] Tzevelekos (n 212) 94
[219] Aeyal Gross, *The Writing on the Wall, Rethinking the International Law on Occupation* (Cambridge University Press, 2017) 381
[220] Psaltis, Cakal, Loizides and Bonnenfant, 'Internally Displaced Persons and the Cyprus Peace Process' (n 5) 140
[221] Ibid

international human rights law, the existence of a "right to return home" has been controversial. Nevertheless, the right to return home could be inferred from international humanitarian law, human rights law, peace treaties or voluntary repatriation agreements as proof of state practice and resolutions and recommendations of the Security Council. However, whether there is a specific "right to housing restitution" is even more controversial. Although such a right logically follows from the right to return to one's home, a specific recognition of such a right is still rare. In the final analysis, the Pinheiro Principles, as an important text of soft law in this field, show that there is a trend towards a right to housing restitution, but further development is needed. In addition, it can be concluded that property restitution, as one of the remedies for human rights violations, could be the preferred remedy and its implementation and position within the hierarchy of modes of reparation should be considered according to the factors causing the violations and other rights relevant to it as alrealy has been the case in several countries examined in this Chapter.

These implications also reveal the question of whether human rights legal frameworks relied upon by many in the TJ field have a negative impact in how they shape the property rights problems, and whether they provide appropriate redress across a variety of historical trajectories. It is stated in this Chapter that restitution becomes increasingly symbolic as time passes and it is more likely under such circumstances that reparatory justice will take the form of compensation. While it is clear that irrespective of the passage of time responding to injustice is crucial, restitution of property has its own momentum. This is also the case in the Cyprus property dispute. Since the displacement routes in Cyprus span a period of more than 50 years, it should also be noted that peoples' experience of it will change over time. The pressing humanitarian concerns, dire conditions, severe abuses, and hardship as a result of flight may no longer exist in some cases as in Cyprus. Furthermore, considering the existence of negative peace, transformation of relationships of the communities is of utmost importance to achieve positive peace. Thus, implementation of absolute property restitution schemes might prove both difficult and other reparatory measures such as apologies, acknowledgment and particularly just compensation might be required instead. In the final analysis, in addition to economic and political justifications, limiting the scheme of restitution can also be considered a means of reconciling the dilemma between corrective aims and the

forward-looking purposes of transformation. However, more research would be useful to further assess whether restitution could play a key role in the reconciliation of the two communities or trigger new tensions, and to probe the attitudes of both communities towards return. Following an examination of recent surveys, it is observed that inclusive processes could play a positive role in overcoming land dipsutes.

The position of the ECtHR in transitional property cases in post-communist countries, has been to take "the potential for outright conflict between human rights norms and the motivations behind restitution" into consideration. Furthermore, in *Demopoulos and others v Turkey,* it has not been blind to concrete factual circumstances. As a result, the limited restitution scheme envisaged by the IPC Law No 67/2005 was accepted by the ECtHR. This has the potential to contribute more to the stabilization of the principle of bi-zonality in Cyprus. But the future can only be evaluated, if at all, following an examination of the IPC's work and its effectiveness. In other words, whether its contribution might result in worsening the relationship between the two communities will be considered further following an examination in the following Chapter.

Chapter 5 The Immovable Property Commission (IPC)[1]

I. Introduction

As indicated in previous Chapters, the two principal elements in the background to the establishment of the IPC concern the Cyprus problem and the contribution made by the ECtHR to the challenge presented by GC property abandoned in the north.

It was also noted previously that the Parliament of the TRNC enacted "Law No 49/2003 on Compensation for Immovable Properties Located within the Boundaries of the TRNC" on 30 June 2003. The Immovable Property, Determination, Evaluation and Compensation Commission (IPDECC) was established under Article 11 of this Law. However, only a total of three applications were lodged with this Commission until it was replaced by the IPC established by Law No 67/2005.[2] The submission of such a small number of applications was said to have been caused by the opposition of the GC leadership and public opinion in the south where the Commission was regarded as an authority of the "puppet" TRNC state. It was observed that the first group of applicants to the Commission were also followed, harassed, and accused by the media and by several politicians of committing treason against the "national cause".[3] The Government in the south also feared that resorting to the Commission as a remedy would have a negative impact on future applications to the ECtHR challenging the validity of the Commission.[4]

As addressed in Chapter 4, the ECtHR's analysis of Law No 67/2005, which entered into force on 22 December 2005, confirmed that it had been enacted in line with the Court's previous findings. Having further examined the said law in *Demopoulos and others*, the Court found that the applicants' case was inadmissible, because the matter of remedies was now settled. It concluded that Law No 67/2005 "makes realistic provision for redress in the current situation of occupation that is beyond this Court's competence to resolve" and that applicants are not obliged to apply to the IPC as they may, alternatively, "await a political solution".[5]

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[1] For a shorter version of the issues discussed in this Chapter see Meliz Erdem and Steven Greer, 'Human Rights, The Cyprus Problem and the Immovable Property Commission' (2018) 67 ICLQ 721

[2] Article 23 of Law No 67/2005 'Law for the Compensation, Exchange and Restitution of Immovable Properties which are within the Scope of Sub-Paragraph (b) of Paragraph 1 of Article 159 of the Constitution'

[3] Emine Çolak, 'Property Rights in North Cyprus' (Turkish Cypriots Human Rights Foundation Publications No.2, 2012) 55

[4] Ibid

[5] *Demopoulos and others v Turkey* Apps Nos 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04, 21819/04 Admissibility (1 March 2010) para 128

Situated on the Turkish side of the Green Line, a ten-minute walk from one of the three check-points along the Nicosia buffer zone, the IPC can easily be accessed by applicants. Its law, regulations, procedures and statistics are available in both Turkish and English on its website. After its establishment, the IPC received a growing number of applications particularly until 2013. However, since 2014 there has been a sharp decrease in numbers. There might be several reasons for the decline and, although it is not possible to accurately assess these, interviews carried out with lawyers/representatives of applicants shed some light on the matter. Leaving aside issues in the wider environment for which the IPC cannot be held responsible, it has, nevertheless, suffered from several problems including: excessive length and alleged unfairness of proceedings, the transparency of its decisions, corporate ownership, complications raised by encumbrances over properties on or before 20 July 1974, exchange, and the execution of decisions awarding compensation.

In order to consider the matter further, the establishment of the IPC will be considered first below, before a review of the arrangements for its structure and procedure, the remedies it provides, how it operates in practice and the challenges it has faced.

II. Establishment

Law No 67/2005 was adopted by the TRNC House of Representatives with very strong protests from the major opposition Ulusal Birlik Partisi (UBP, National Unity Party) and was challenged at the TRNC Constitutional Court.[6] It was claimed that Article 159 of the Constitution only allowed monetary compensation for GC properties, but not restitution or exchange, and that allowing compensation for non-pecuniary damages would be tantamount to accepting sole responsibility for the political situation in Cyprus. Furthermore, it was stated that establishing the IPC as an exceptional court and/or a commission with judicial powers also violated the Constitution. The appointment of the president, vice president and the members of the Commission by the Supreme Council of Judicature was also said to be against the Constitution because the duties of the Supreme Council of Judicature of the TRNC were limited under Article 141. In addition, the appointment of two foreign members

[6] Çolak (n 3) 55

to the Commission was regarded as a violation of the principle of "sovereignty". The TRNC Constitutional Court rejected these claims. Taking the purpose of Law No 67/2005 into account, it stated that the IPC is an "Administrative Tribunal" and it was thus possible that it was established as an administrative institution under the Constitution. The Court highlighted the fact that there was room within the Constitution for the TRNC National Assembly to assign other duties to the Supreme Council of Judicature. Furthermore, and most importantly, addressing the international conventions and treaties concerning human rights and the elimination of discrimination, texts and agreements under international law on property in occupied areas, and decisions and judgments of the Strasbourg Court, the TRNC Constitutional Court held that the Constitution should be interpreted in line with these principles. As a result, it concluded that Law No 67/2005 was not contrary to the Constitution.[7] As Çolak states, this was a ground-breaking decision for property rights in north Cyprus and for human rights law in general since the Constitutional Court confirmed the direct applicability of the ECHR and the case law of the ECtHR in the domestic legal system.[8] Addressing the claims of UBP at the Constitutional Court, Oğuzhan Hasipoğlu, a representative of UBP, stated that the party's arguments in that case should be analysed from a constitutional law perspective.[9] He further noted that the party did not agree to a mechanism which would cause displacement of TCs, the current users of properties. Pointing out that they had concerns for the possible negative effects which could have arisen as a result of the operation of the IPC, he asserted that the party endorsed the contribution of the IPC. However, whether this is an acknowledgment of the wrongs faced by the displaced GCs is not clear.

The IPC officially began its activities on 17 March 2006 following the appointment of its president, vice-president and members. According to its founding Statute, members, who are required to be lawyers or persons with experience in public administration and evaluation of property, shall be appointed by the Supreme Council of Judicature, from candidates nominated by the President of the TRNC for a period of five years, subject to re-appointment. In order to safeguard the objectivity of the Commission persons directly or indirectly deriving any benefit from GC

[7] *Ulusal Birlik Partisi ile KKTC Cumhuriyet Meclisi* [National Unity Party v TRNC National Assembly] AM 3/2006, D. 3/2006 (21 June 2006)
[8] Çolak (n 3) 56
[9] National Unity Party (UBP), Interview with Oğuzhan Hasipoğlu, the Foreign Affairs Representative of the Party (Nicosia, 21 February 2018)

properties cannot be appointed.[10] The Law states that no person or authority can order or instruct members[11] and that they enjoy the same assurances with respect to termination of their term of office as a judge of the Supreme Court of the TRNC.[12] At least two members must be nationals of States other than the TRNC, UK, Greece, Greek Cypriot Administration (the RoC) or Turkey.[13] The IPC Law also establishes a secretariat with staff hired on a contractual basis as authorised by the Council of Ministers of the TRNC upon a proposal of its President.[14] Although not confirmed by other sources, according to an interview with Ayfer Erkmen (President), Romans Mapolar (Vice-President) and Güngör Günkan (Member) in June 2017, approximately 50-60 civil servants, including prosecutors and those relevant land registry officers, are connected with the work of the IPC.[15]

III. Process

As of 31 Januray 2019, 6,513 applications had been lodged with the IPC, 941 of which were settled by friendly settlement at the preliminary hearing stage and 32 by adjudication on the merits at the hearing stage. 951 of these were settled by the award of compensation. In addition, exchange and compensation was awarded in two cases, restitution in three cases, restitution and compensation in six cases, restitution after the settlement of Cyprus problem in one case, and partial restitution in another case. 186 applications were also withdrawn, either because the applicants no longer wished to pursue them, because ownership was not proven, or because of other legal difficulties such as lack of documents requested by the defendant. The rate of applications to the IPC has also fluctuated with, in 2011, a sharp increase to 1,926, a decrease to 375 in 2014, 182 in 2015, 50 in 2016, 81 in 2017 and 117 in 2018.[16] According to the IPC President Erkmen, declining application rates may be

[10] Article 11(1)(A) and Article 11(1)(B)
[11] Article 12
[12] Article 11(3). Only exception to this rule is the termination of office of term of a member as a result of absence from the Commission meetings without a reasonable explanation which is outlined in the same article.
[13] For members see <http://tamk.gov.ct.tr/english/index.html> accessed 24 March 2017; for their backgrounds see <http://tamk.gov.ct.tr/english/uyeler.html> accessed 31 May 2017
[14] Article 11(4)
[15] '235 Milyon Sterlin'in 55 Milyonu Hala Ödenmedi' ['£55 Million of £235 Million Still Unpaid'] , *Meydan Kıbrıs* (4 June 2017) <http://meydankibris.com/haber-235-milyon-sterlin-in-55-milyonu-h-l-odenmedi-19431.html> accessed 7 June 2017
[16] See <http://tamk.gov.ct.tr/dokuman2/istatistik_ocak19.pdf > accessed 31 January 2019

influenced by delays in the award of compensation.[17] The IPC's website states that a total of £300,090,876 has been awarded by January 2019.[18] In an interview of June 2017, Ayfer Erkmen (President), Romans Mapolar (Vice-President), and Güngör Günkan (Member) revealed for the first time that approximately £55 million of the total amount of compensation awarded had still not been paid, a figure which by 31 May 2018 had increased to £86,689,608.[19] According to President Erkmen roughly £2 billion will be needed to finalise the 5,000 or so applications awaiting resolution.[20] In the 2018 budget, the amount of compensation included is approximately £12.5 million which was insufficient.

Article 159(1) (b) of the Constitution of the TRNC determines the scope of Law No 67/2005 and reads as follows:

> *(b) All immovable properties, buildings and installations which were found abandoned on 13 February 1975 when the Turkish Federated State of Cyprus was proclaimed or which were considered by law as abandoned or ownerless after the above-mentioned date, or which should have been in the possession or control of the public even though their ownership had not yet been determined [...]*
>
> *[...]*
>
> *[...]shall be the property of the TRNC notwithstanding the fact that they are not so registered in the books of the Land Registry Office; and the Land Registry Office shall be amended accordingly.*[21]

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[17] 'Ağlayarak gelen Rumlar var' ['There are Greek Cypriots who come in tears'] *Gündem Kıbrıs* (11 July 2017) < https://www.gundemkibris.com/aglayarak-gelen-rumlar-var-217098h.htm> accessed 17 July 2017; see also 'Body to compensate Greek Cypriot Refugees running out of funds' (*Cyprus Mail*, 7 August 2017) <http://cyprus-mail.com/2017/08/07/body-compensate-greek-cypriot-refugees-running-funds/> accessed 8 August 2017

[18] See < http://tamk.gov.ct.tr/dokuman2/istatistik_ocak19.pdf > accessed 31 January 2019

[19] '16 bin dönüm 235 milyon Sterlin'e Türk toprağı oldu' [16,000 *donums* have become Turkish land for £235 million'] (*Kıbrıs Gazetesi*, 4 June 2017) < http://www.kibrisgazetesi.com/kibris/16-bin-donum-235-milyon-sterline-turk-topragi-oldu/19967> accessed 7 June 2017. Not an updated amount has been given by the President Ayfer Erkmen or the Vice- President Romans Mapolar during the interview on 2 July 2018 (Interview with the President Ayfer Erkmen and the Vice-President Romans Mapolar, IPC (Nicosia, 2 July 2018)

[20] 'Ağlayarak gelen Rumlar var' (n 17)

[21] The Turkish Federated State of Cyprus lasted until the TRNC was proclaimed on 15 November 1983

The Law provides, subject to the payment of a fee of 100 Turkish Lira for each application,[22] that all natural and legal persons claiming rights over immovable or movable properties within its scope may bring claims against the Ministry of Interior.[23] The legal deadline, which can be extended, is currently 21 December 2019.[24] The applicants may request restitution, exchange or compensation. Applications submitted to the Commission shall also be subject to the Rules made under the Civil Procedure Law[25] and the Rules made under Law No 67/2005.[26]

According to Article 6 of the Law, the applicants must prove "beyond reasonable doubt" that:

(a) The movable or immovable property in question is the one claimed in the application.

(b) The property was registered in their names before 20 July 1974 and/or they are the legal heir of the 1974 owner.

(c) No other persons, apart from the applicant(s) claim rights in respect of the property in question,

(d) If what is claimed is compensation, it represent 20 July 1974 value of the property plus compensation for loss of use.[27] Where the compensation claimed is for non-pecuniary damages, it must be proved that the immovable property was used as a home prior to 20 July 1974[28] and if the subject of the application is movable properties, the compensation claimed is the market value at the date of the application.

(e) Whether the immovable property is subject to mortgage and/or any other restrictions imposed by a judgment or order of a competent court before 20 July

[22] Article 4(1) of the Law
[23] Article 7 of the Law
[24] This deadline is extended by the General Assembly of the TRNC with an amendment in the Law
[25] These are the Rules of Civil Procedure applied at the Law Courts
[26] Article 4(1) of the Law
[27] The wording of the Article is problematic. In practice, it is understood that the applicant proves 20 July 1974 value of the property and this amount is adjusted to find the current market value of the property.
[28] During the interview with the President Ayfer Erkmen and the Vice-President Romans Mapolar which took place on 2 July 2018, it was stated that there has been a case in which the IPC awarded compensation for non-pecuniary damages where the property was used as applicants' "home". In another case which the Vice-President referred to, although the property was claimed to be used as applicant's "home", the IPC did not award non-pecuniary compensation considering that the applicant lived there only until he was 6. The IPC considered that the applicant did not have "emotional attachment" to the subject matter property referring to the ECtHR case *Asproftas v Turkey* App no 16079/90 Merits and Just Satisfaction (27 May 2010) in which the Court did not find a violation of Article 8 of the Convention. (Interview with the President Ayfer Erkmen and the Vice-President Romans Mapolar, IPC (Nicosia, 2 July 2018)

1974, if it is whom the mortgage was in favour of, the amount of debt and the interest, if the debt was paid and the amount of payment.[29]

(f) The movable property belonged to the applicant prior to 13 February 1975 and that it was abandoned without consent.

During interviews carried out with applicants' lawyers/representatives, it was claimed that the wording of the Law enabling 1974 owners or their legal heirs to have *locus standi* before the IPC has caused problems. Applying the concept of "legal heirs" in the wider sense, the Ministry of Interior and the Attorney General's Office did not initially raise any objections at the friendly settlement meetings before the IPC against potential legal heirs. However, for the past four years or so they have been doing so by resorting to the Law on Succession (Cap. 195) and claiming that if there are first degree relatives as envisaged in the said Law, the second-degree relatives of 1974 owners cannot have *locus standi* before the IPC. However, even in such cases, they accept *locus standi* for applicants whose grandparents were 1974 owners even if their children were alive when the property concerned was gifted to the applicant by his/her grandparent (1974 owner). In other words, the defendant's claim is that the legislation in force in the TRNC (Cap. 195) does not allow for the status of "heirship" of second degree relatives if there are first-degree relatives also ranked. Even in this regard, different litigators have different views. Some only look for proof that the original owner in 1974 had no legal heirs other than the applicant, while others ask for the estate documents of the deceased 1974 owner. Lawyer Y claimed that the Attorney General's Office asserted that it would take a joint position in this regard, but that this has not been the case so far.[30] No indication has been found from the minutes of the relevant legislative process of whether the intent was to restrict the class of property owners eligible to apply the IPC. In the Annan Plan V, the description of the "dispossessed owner" was "a natural or legal person who, at the time of dispossession, held a legal interest in the affected property as owner or part owner, his/her legal heir, personal representative or successor in title, including by gift".[31] However, Law No 67/2005 did not define the applicant as such. Whether excluding some applicants as eligible persons for application before the IPC can be considered as "control of the use of property" not acceptable within the meaning of

[29] It is not clear whether the intention is the requirement of proof by the applicant that there are no mortgages and/or encumbrances over the property. In practice, the IPC seeks proof in this respect.
[30] Interview with Y, Lawyer (Nicosia, 1 March 2018)
[31] Appendix VII Attachment 1 Article 1(5)

Article 1 Protocol 1 of the ECHR is debatable and needs careful evaluation in order to avoid further problems for applicants. Clearly, accepting the applicants' ownership, the ECtHR found a violation of Article 1 of Protocol 1 in *Joannou v Turkey,* where some of the properties were gifted to her by the applicant's aunt, the 1974 owner. In its judgment the Court stated that it was clear that the aunt had done so in 1997 while she was still alive.[32] There was no arguments regarding the issue of "succession". The IPC accepted the applicant's heirship with its decision in March 2019. Both parties appealed.[33]

According to the Rules made under section 8(2) (a) and section 22 of the IPC Law[34], an application shall be made upon the sample form attached.[35] An applicant may apply to the Commission in person, by a representative or through a lawyer.[36] Every application is given a number and includes the name and surname of applicants, their identity cards/passport numbers, the request for confidentiality if any, the respondent party (the Ministry of Interior and/or Attorney General representing the Ministry), the name, surname and address of the lawyer if any, an address and contact number of the applicant if the application is made in person, a statement of claim, a description of the movable and/or immovable property subject to the claim, the share of the property in question, and whether it is subject to any mortgage or other encumbrance.[37] Applicants are required to attach the originals or duly approved copies of title deeds and of their identity cards or passports. Apart from Güzelyurt (Morphou), and some parts of Nicosia district, the records are not available in the south. GCs whose title deeds from 1974 are missing can obtain these for their abandoned properties by way of a declaration made before the relevant land registries in the south by providing a "mukhtar certificate" from the mukhtar (principal representative) of the relevant neighbourhood having knowledge of the ownership of the property in question. Claims over the same properties by others are considered as encumbrances and, before they can proceed in such cases, applicants

[32] Para 99 of the Judgment
[33] The details of the IPC decision is not public. It is not possible to address the grounds of the parties for appeal until it is finalised by the High Court.
[34] "Rules Made Under Sections 8(2)(a) and 22 of the Law for the Compensation, Exchange and Restitution of Immovable Properties Which are Within the Scope of Sub-paragraph (b) of Paragraph 1 of Article 159 of the Consititution (Law No 67/2005)" available in English <http://tamk.gov.ct.tr/dokuman/Tuzuk-ING.pdf> accessed 3 December 2017
[35] Rule 3(1)
[36] Rule 3(2)
[37] Rule 3(3); these can also bee seen from Form no 1 attached to the Rules of the IPC

are required to discharge these together with any mortgages, court orders or other charges registered on the properties on or before 1974.[38]

For movable properties, applicants must either submit the originals, or duly approved copies of documents such as receipt, cheque, bank transfer, exchange transfers proving ownership before 13 February 1975, or that the property was hitherto acquired by way of inheritance or gift.[39] Considering the manner and circumstances in which property in the north was abandoned, and the long passage of time since, this presents considerable challenges.

Within 21 working days from the date of filing, a copy of the application is served on the Ministry and/or the Attorney General representing it.[40] In practice, the Ministry is always represented by the Attorney General's Office and the affidavit attached to the opinion/defence is signed by the Head of the Land Registry because the ownership in 1974 and the value of the properties subject to the applications are determined by the relevant land registry offices.[41] Within 30 working days from the notice of the application, the Ministry and/or the Attorney General is then required to file a defence/opinion attached to the form in accordance with the Rules. For the purposes of preliminary hearing for a friendly settlement this consists of a summary of the facts and an evaluation of the value of the relevant property in 1974 including an attached affidavit of persons having knowledge of the matter,[42] and also a statement of the current value of the property.[43] The offer made at the preliminary hearing can either be of the same value as that stated in the defence/opinion, or higher as updated by the Ministry. At this stage, the IPC does not intervene in the assessment of the compensation offered.

The IPC has duties and powers to examine applications, determine the amount and method of payment of compensation, collect written or oral testimony, hear witnesses, summon any person residing in the TRNC to give testimony or to produce any document, compel any persons to give evidence or to produce a

[38] TV program interview with Güngör Günkan (the President of the IPC at that time), 'Açık Kamera' ['Open Camera'] (16 December 2014) (Not available online)
[39] Rule 3(5)(a) and (b)
[40] Rule 3(6)
[41] It should be added that the relevant Land Registry Offices prepare a research report for relevant properties and the defendant (Attorney General's Office representing the Ministry of Interior) prepares opinions/defences in line with the said reports. These are then submitted to the IPC and served to the applicants at the direction stage of the proceedings (Direction stage is before the preliminary hearing/friendly settlement meeting)
[42] Rule 3(8); this is Form No 2 attached to the Rules
[43] Çolak (n 3) 62

document in their possession and award expenses to any persons summoned.[44] It is an offence in the TRNC to refuse to produce any documents or information required by the Commission, or to fail to appear, or decline to give evidence without legal excuse. A monetary fine can be imposed upon conviction.[45]

Like court judgments, IPC decisions have binding effect, are executory and are required to be implemented without delay upon being served on the authorities concerned.[46] Article 18 of the Law also states that the Ministry of Financial Affairs shall provide a separate item under the annual budget for the payment of compensation awarded by the Commission and other expenses incurred by application of the IPC Law. As a result of its administrative status the Commission does not, in other words, have an independent budget, and is subject to that of the Ministry of Interior, the defendant in the proceedings, which raises concerns about its de facto independence and credibility.

In some cases the issues cannot be solved at the preliminary hearing. If the applicant does not accept the compensation offered at this stage, or if the parties cannot reach an agreement as a result of other legal issues, they might request a hearing date and also apply to the High Administrative Court against the IPC's decision.[47] Article 9 also states that the applicant may apply to the ECtHR if he/she is not satisfied with the judgment of the High Administrative Court.

According to Law No 67/2005, the amount of compensation awarded by the Commission entails both the value of the property and loss of use (if claimed by the applicant). Since the IPC cannot award compensation for loss of use only, Article 10 provides:

> *10.(1) Applicants who receive compensation in return for their rights over immovable properties in virtue of the application of the provisions this Law can, under no condition, make a claim of right of ownership over immovable property for which they have received compensation.*
>
> *(2) Applicants who receive new immovable property by way of exchange in virtue of the application of the provisions of this Law can, under no condition,*

[44] Article 13 of Law No 67/2005
[45] Article 15
[46] Article 14
[47] Article 9 of Law No 67/2005

make a claim to a right of ownership over the immovable property on which their application was based.

Therefore, when a decision for "compensation" or "exchange" is executed, the applicants can no longer claim ownership over their properties. Article 6 of the Rules of the Commission states that the IPC's decisions regarding restitution, exchange and compensation, in lieu of the property/loss of use and compensation for non-pecuniary damages shall be executed by the Ministry of Interior. In this respect, the Ministry is required to prepare a friendly settlement agreement[48] in accordance with the form attached to the Rules[49] and to invite the applicant in order to sign it. Although Rule 6(2) states that the applicants'representatives can also sign the agreement, the Land Registry and the Ministry of Interior do not accept their signatures asking for the applicants' presence. This has no legal basis. Thus, in practice, the applicants should be present in person. Once the applicant signs the agreement, compensation awarded by the IPC is transferred simultenaously to his/her bank account.[50] Up to this point, the applicant retains the right to reject the offer and to appeal against the IPC's decision to the High Administrative Court.[51] Final friendly settlement agreement state that:

I declare and accept that with the execution of the decision of the Immovable Property Commission dated _____ and numbered_____ served to me regarding the compensation and/or exchange and/or restitution, the damage I have suffered with respect to the relevant movable and/or immovable property is fully recovered.

I declare and accept that I shall not claim any right regarding the movable and/or immovable property set forth in my application upon the receipt of

[48] The term "friendly settlement" is used at two stages. The first refers to a preliminary hearing; a meeting before the IPC where the officials of the Ministry of Interior, the Attorney General's Office as their representative, the applicants and their lawyers/representatives participate. The Ministry makes an offer of compensation at this meeting. The parties sign minutes of the meeting of friendly settlement containing details of the subject matter properties and the offer made. The IPC then formally awards the sum agreed. The second stage at which the term friendly settlement is used is the execution of the IPC decision.
[49] Form No 3
[50] TV program interview with Güngör Günkan 'Açık Kamera' ['Open Camera'] (n 35)
[51] Rule 6(4)

compensation in lieu of the said properties pursuant to the application of the Law (a).[52]

Thus, when the compensation has been received, the applicant relinquishes all their rights over the property and transfers title to the TRNC. This is carried out at the premises of the IPC, in the presence of an official from the Land Registry and the Ministry of Interior. It should be added that applicants also need to bring an updated search document from the Land Registry in the south showing that there are no encumbrances on the property concerned.[53]

In 2008, Law No 13/2008 was enacted by the TRNC General Assembly for properties within the scope of Article 159(1) (b) of the TRNC Constitution,[54] which are not owned by any natural or legal person other than the TRNC under the TRNC legislation in force but are currently in possession of a natural or legal person by way of a contract (signed with the State) for a period of more than three years.[55] Briefly, the law provides for natural or legal persons in possession of such property, to apply to the IPC seeking leave to purchase it from the GC who owned it on 20 July 1974, from the legal heir of such person, or from a person documenting that he has lawfully taken over the property from its 1974 owner or from legal heir of such person.[56] The crucial point regarding the applications made before the IPC under this Law is that the property owner concerned is TRNC according to TRNC legislation. However, it should be noted that Article 6(3) of the Law provides for other possibilities and states that the IPC might grant leave for the purchase of subject matter property where the applicant (buyer) is a shareholder in the property concerned, the applicant had invested in a property which is closely related with the property concerned, or if the property is adjacent to that of the applicant. There has only been one application

[52] In cases of exchange of properties, the statement is as follows*:* 'I declare and accept that I shall not claim any right regarding the immovable property set forth in my application upon the acquisition of a new immovable property in exchange and/or receipt of compensation in lieu of the said properties pursuant to the application of the Law (b).'

[53] TV program interview with Güngör Günkan 'Açık Kamera' ['Open Camera'] (n 35)

[54] This was also the case for Law No 67/2005 as previously stated.

[55] 'Law for Transfer and Registration of Rights over the Immovable Properties which are within the Scope of Sub-paragraph (b) of Paragraph (1) of Article 159 of the Constitution, and which, are not owned by any natural and legal persons, apart from the State, under the TRNC laws, being currently in Possession of such natural and legal persons', Law No 13/2008. The law contains more detailed provisions, but these are not examined here since the main purpose is to address the essence of the Law.

[56] Article 2 of Law No 13/2008 (no official translation of the Law is available)

under this Article so far.[57] Following the examination of other conditions set forth in the Law, the IPC grants leave, authorizing the applicant (the buyer) to sign a sales contract with the vendor (the GC owner). The buyer then applies to the Ministry of Interior for the approval of the transfer of the ownership of the subject matter property to his name at the relevant Land Registry Office. Through this law, natural or legal persons who are in possession of such properties pay for the purchase price without imposing any material burden on the state. Five applications had been finalised under this law by January 2019.[58]

IV. Remedies

As already indicated, the three remedies provided under the IPC Law are compensation, restitution and exchange. Loss of use and/or non-pecuniary damages with respect to immovable properties may also be included, but not independently.[59] These are considered in turn below.

A. Compensation

Interviewed lawyers/representatives state that most of their clients claim compensation mainly for economic reasons.[60] It was also noted that this is a consequence of the limited conditions for restitution set forth by the IPC Law and of difficulties regarding exchange of properties as will be addressed below in the relevant sub-sections.[61] Lawyer Murat Hakkı further indicates that applicants who were born after 1974, having no sentimental attachments/emotional links with the north, generally prefer compensation. In addition, applicants have become more realistic through time. As 43 years have elapsed since they lost their properties, they mostly prefer to claim compensation.[62] In this respect, 68 year-old applicant 1 notes:[63]

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[57] Interview with the President Ayfer Erkmen and the Vice-President Romans Mapolar (n 28)
[58] See <http://tamk.gov.ct.tr/dokuman2/istatistik_ocak19.pdf> accessed 2 February 2019
[59] Article 8 of Law No 67/2005
[60] Interview with Minhan Sağıroğlu, Lawyer (Nicosia, 29 November 2017); Interview with X, Representative (Nicosia, 4 December 2017); Interview with Murat Hakkı, Lawyer (Nicosia, 16 November 2017)
[61] Interview with Y, Lawyer (Nicosia, 1 March 2018); Interview with Murat Hakkı, Lawyer (Nicosia, 16 November 2017
[62] Interview with Murat Hakkı, Lawyer (Nicosia, 16 November 2017)
[63] Interview with Appliant 1 (Nicosia, 9 February 2018)

I know that I am not going to take my house back, so I decided to apply to the IPC to sell them because of economic problems. In the beginning I never thought to apply. There were no emotional issues either, because I have a good job, good salary so I did not have the need to sell my properties in the north. However, later on, because of personal reasons, I had to get a loan, my house is under mortgage, so I had to apply. And we have to take the money through my application to the IPC as soon as poosible to save my life. [….] *Every month I have a letter from the bank about my loan.*

Having many TC friends in the north, he states he neither felt stressed nor was afraid to apply to the IPC. According to him, the fact that his property remains on territories under the control of Turkish administration does not have an impact on his decision to claim compensation. Having asked whether he would accept, as part of a comprehensive settlement of the Cyprus problem, a property scheme which involved compensation for his property but not its return, he states that he would not mind:

I want to live in the north, if I could, I want to come and live here because they don't do anything bad to you if you don't do anything bad to them. If I didn't have economic reasons I would want to return and if your government give me my house, I would come even today.

Pavlos Loziou, a 57 year-old applicant, also indicates that he submitted his case to the IPC in 2011 mainly for economic reasons and claimed compensation.[64]

Participants further expressed their disappointment in the governments' approach in the south which is also connected with their motive in resorting to the IPC and claiming compensation. One of them states:

I don't mind what the authorities in the south think, they have their reasons, they take advantage of the fact that there is no solution. All political parties try to discourage people to come here [IPC]. But no stress for me, no fear.
It is only before elections that politicans make commitments to us, but later they do not pay atttention to us, and furthermore they blame and criticise us for applying to the IPC to sell our properties almost for free. But in the first place, they do not protect us at all. People having economic problems can understand

[64] Interview with Pavlos Loziou (Nicosia, 23 February 2018)

us, others calling us traitors for applying to the Commission. This is why I rarely mention to other people that I have applications at the IPC.[65]

Applicant 3, 67 years old at the time of this interview, and owner of the subject matter property in 1974, stated that his property is close to the seaside and consisted of a big house, shop, fields and plots of about 7,000 square meters.[66] He asserts:

I applied to the IPC in December 2011 because of financial resons as I had to have an open heart operation. Last December [2017] I was invited for a meeting but because of bureaucratic and legal difficulties my application was postponed. They asked me to submit more documents.

He notes that he feels entirely abandoned by the government of the Republic of Cyprus. This is also the case for 72 year-old applicant 2.[67] Applicant 3 also indicates that well known people, even the Priest, calls them traitors for applying to the IPC and "selling their property to Turkey". He genuinely adds, "TCs are very friendly and I remember this since my childhood." However, for Applicant 3, it matters whether he feels secure or not. In this respect, he states that he can only return to his property if he feels secure, and the fact that his property "is under control of Turkey had an impact" on his claim before the IPC. He notes:

The political situation remains unsettled for 44 years and I cannot use or invest in my property. But, I cannot return if I do not feel secure.

Mr Loizou and his family have highly valuable properties in the north and he also blames politicians for the current situation. He further records:

I wanted a solution in 2004. In the Annan Plan it was mentioned that older people will be able to live there in the north if their porperty is not knocked down etc. My father is disabled, I wanted my father to live there and so did my father.

According to Article 8(4) of the Law, if the applicant's claim is for compensation, or if the Commission decides to award it, the following points are taken into account:

[65] Interview with Applicant 1 (Nicosia, 9 February 2018)
[66] Interview with Applicant 3 (Nicosia, 9 February 2018)
[67] Interview with Applicant 2 (Nicosia, 23 February 2018)

- market value of the property on 20 July 1974,
- loss of income and increase in the value of the property between 1974 and the date of payment,
- whether the applicant possesses property in the south belonging to a Turkish Cypriot,
- whether the applicant receives income from such property or whether the applicant pays rent for such property,
- if the claim is compensation for movables, the manner of use of the property and the links the applicant has with it in determining non-pecuniary damages and the market value at the time of the decision to award compensation.

Unless there is a dispute between the parties, the IPC does not intervene during the friendly settlement meeting where the defendant makes an offer of compensation. The Vice-President of the IPC Romans Mapolar states that the Commission takes comparable sales values into account as submitted by the parties at the hearing stage. Nevertheless, most of the time the defendant Ministry calls an official from the relevant land registry to testify as a witness and to submit the relevant registry records. Since the applicant does not have access to these records, he/she generally calls a valuation expert and/or an estate agent as witness. In this regard, Mapolar asserts that if the valuation expert does not submit concrete evidence about how he/she determined the values claimed, the Commission does not take them into account and concludes that the applicant did not prove his/her claim. If neither of the parties prove their claim, the IPC makes an equitable assessment. President Erkmen states that lawyers complain about and blame the Commission for taking the wrong side. Maintaining that this is not the case, he asserts that the applicant party can also invite another official from the land registry to base his/her claim on other comparable sales.[68] But whether this is possible in practice is debatable.

Mapolar indicates that for "loss of use", the Commission applies a method similar to that used in GC property cases before the ECtHR.[69]

However, the IPC does not award interest payable from the date of its decisions. This is problematic considering the lengthy delays in payment of compensation, considered further below, and the fact that Law No 67/2005 does not

[68] Interview with the President Ayfer Erkmen and the Vice-President Romans Mapolar (n 28)
[69] Mapolar notes that the IPC does not award loss of use for potential income, and examines whether the applicant had been generating income through the subject matter property to award compensation for loss of use.

contain any provisions enabling the Commission to award interest, a problem in both friendly settlements and hearings. If the IPC is to be in line with the ECtHR, it should award simple interest at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points[70] or a rate as applied by the Law Courts in the TRNC. Otherwise would mean that applicants are obliged to lend money to the TRNC government with no interest which is neither fair nor reasonable.

Interview participants indicate that they are not satisfied with the amount of compensation awarded either through friendly settlement meetings or hearings. According to Sağıroğlu, the difference between 1974 owners and their legal heirs regarding their choice of remedy concerns expectations about the amount of compensation to be offered which is much higher in the case of 1974 owners since they deem their properties very valuable. Nevertheless, he considers that valuations made by the relevant land registry offices, upon which the defence/opinion of the defendant is based, are far below market values. Although offers made by the Ministry of Interior at the friendly settlement meetings are higher than those of the land registry reports and the opinions by the Attorney General's Office, these are still insufficient. He observes that, this stems from the fact that land registry valuations are made according to 2007-08 values which remain outdated until an application reaches the friendly settlement meeting when a new offer might be made by the Ministry. Sağıroğlu suggests that the IPC should intervene at this stage to improve offers made by the defendant. Murat Hakkı also considers that the amounts of compensation offered not only remain below the valuation parameters envisaged by the ECtHR, but also market values in the TRNC. He notes that this applies both to the offers made at the friendly settlement stage by the Ministry, and the amount of compensation awarded by the IPC in its hearings.

Lawyer Y observes that the offers of compensation at friendly settlement meetings are markedly lower than the current market values and that the amounts for loss of use, supposedly included in the offers, are far from satisfactory since they are

[70] See for example *Joannou v. Turkey* App No 43240/2014 Merits (12 December 2017). The issue of interest and losses incurred as a result of lengthy delays in payment of compensation were challenged before the Court of Appeal of the TRNC. The case was brought before the Court after the applicants received payment. The Court stated that, with the friendly settlement agreement signed simultaneously with the payment of agreed compensation, the applicants declared their satisfaction with the award. Thus, the applicants' claims were rejected. (*Constantinos Vassiades ve diğeri ile İskan İşleri ile Görevli Bakanlık ve diğeri arasında* [Constantinos Vassiades and other v the Ministry of Interior and other] Yargıtay Hukuk No: 15/2017 (Lefkoşa Dava No 9046/2015) D. 39/2018 (6 December 2018)

based on land registry evaluations, increased to a certain extent by the defendant as mentioned above. However, these increases vary and it is not possible clearly to assess the reasons and/or the rationale for it. Y considers that the political environment limits the powers of the Ministry of Interior. On the other hand, according to Y, the IPC members are actively involved as mediators with regard to values offered by the defendant during friendly settlement proceedings. It should be noted that Y is a minority view and none of the interview participants share this opinion on the grounds that it has no impact on the defendant who is reluctant to use the discretionary power to increase the values alleging that the IPC has settled similar applications using comparable values. Y asserts that using comparable sales recorded in land registries to estimate compensation offered by the Ministry can be problematic since these are always lower than the actual market value of properties because, when selling and/or buying properties, for tax purposes, people tend to declare lower amounts than the ones agreed with the actual sales agreements. According to Y, the clients either accept offers made by the defendant or do not want to proceed with their applications at all as a result of the time taken to come at the friendly settlement stage or awaiting a hearing date. Considering all of these factors, Y believes that the applicants, particularly the ones the subject matter of whose applications were their "home", feel cheated by the defendant.

Representative X, disagreeing with lawyer Y, states that IPC members are passive at the friendly settlement meetings. Y asserts that the IPC should itself obtain expert reports about the values of properties. In fact, Article 7(3) of the Statute of the IPC states that the Commission may at any stage of the proceedings on its own motion call any person to give evidence or produce any document for the purpose of reaching a fair decision. Furthermore, Article 4 states that any compensation to be paid shall be determined by the Commission in an equitable manner and in accordance with the criteria enumerated in the Law and, by taking into account the opinions of experts, if any. Thus, the IPC could intervene to ensure that a more equitable offer is made by the Ministry at the friendly settlement stage. X argues that expert reports submitted by applicants are not taken into consideration at all at this stage and that relevant land registries provide 1974 values and current values of properties in their research reports which are not re-valued at the time of friendly settlement meetings. X argues that, if the IPC made its own estimations, this problem could have been overcome. Lawyer Minhan Sağıroğlu who also has concerns

regarding the defendant's friendly settlement offers for same reasons, notes that increases made by the defendant remain far below market values of properties. He further adds that equitable principles suggest the IPC should intervene in this respect and support applicants, as the weaker party in the proceedings.

Lawyer Tarık Kadri, agreeing with other respondents regarding the low amount of compensation offered, observes that until 2013, the defendant used to increase the values of properties assessed by relevant land registry offices up to 40%, however, since 2013 these typically only reach 10% of land registry values. Applicants generally prefer to accept these amounts instead of waiting a long time for hearing dates. Tarık Kadri adds that 1974 owners estimate the value of their properties according to the conditions at the time of abandonement considering, plus the fact that they had lives and memories there.[71] Their legal heirs/later generations, however, having lost hope regarding the solution of the Cyprus problem, accept lower amounts of compensation. Kadri considers that, the defendant being aware of this, rejects making payment for awards to the estates of deceased applicants in finalised cases, thus, promoting the legal heirs to settle for lower amounts. He rightly notes that there is no legal justification for non-payment to the estates of deceased applicants. In December 2018, the Attorney General's Office reconsidered its position deciding to carry on with payment in such cases.

Applicant 1 also felt disappointed because of the amount of compensation he received for his property. He notes that he thought he could get a higher amount but this was not the case:

> *I did not want to accept the offer made at the IPC, but I had to accept because of economic reasons. I have children to take care of and they also insisted I have to get what I can.*

When it comes to hearings, Kadri states that the compensation awarded by the IPC is much closer to the market values, but still remains below. Furthermore, there are problems with respect to "loss of use", the value of which, according to Kadri, applicants are expected to prove. According to him, loss of use is not the real profit gained by the applicant at the time of loss of property, but an objective amount of rent to be gained through it, and that obliging applicants to prove their real losses is

[71] Interview with Tarık Kadri, Lawyer (Nicosia, 25 November 2017)

not reasonable considering that more than 40 years have elapsed since the loss of their property. Kadri also observes that compensation for non-pecuniary damage has not been awarded so far in any application.

Achilleas Demetriades frankly suggests that the amount of compensation put forward is "ridiciously low and, in fact, there is no offer for loss of use". He further notes that this is "unacceptable" because, in some cases pending before the ECtHR, "the IPC made an offer - first heading being "loss of use" and second heading being "expropriation value" - but they now give the applicants very low prices, which allegedly includes loss of use". He also questions the lack of compensation for "moral damage".[72] In *Joannou* held before the IPC following the ECtHR judgment, the defendant's witness put forth comparable sales values of GC properties in 1974, a different approach from that of observations of Turkey before the ECtHR in the same case which included a method for calculation of compensation. GC properties are, in fact, worth less than the value of TC properties in the TRNC markets. The IPC decision is still pending in this case and its approach remains to be seen in this regard. Nevertheless, each case should be evaluated in its own circumstances and it is unfair that compensation awarded is considerably lower than real market values.

The Ministry of Interior did not respond to a request for an interview, leaving the allegations by the applicants and their lawyers unchallenged.

B. Restitution

Since the IPC Law is intended to address relevant property disputes in accordance with the principle of bi-zonality, a UN parameter for the negotiations of the Cyprus problem, restitution of immovable properties is subject to the following limited conditions:[73]

(a) Immovable property, the ownership or use of which has not been transferred to any natural or legal person other than the State according to the legislation in force in the TRNC, can be restituted *within a reasonable time.* But for this, such restitution must not endanger national security and public order taking location and physical

[72] Interview with Achilleas Demetriades, Lawyer/Representative (Nicosia, 15 December 2017) (Demetriades is registered in the Republic of Cyprus as a lawyer. He pursues applications before the IPC as a representative together with a registered lawyer in the TRNC. He questions the fact that he is eligible to pursue applications as a representative under the IPC Law, but he is not allowed to appear and/or participate meetings before the IPC)

[73] Article 8 of Law No 67/2005

condition into consideration. If the property is allocated for the purposes of public interest, it cannot be returned. Furthermore, the property must be outside military installations or areas defined as under military control.

(b) If the conditions set out above in paragraph (a) are not met[74], and if the property has not been allocated for the purposes of public interest or social justice, then a more detailed examination should be made:

(i) If the user of the property has improved it, and

- if any resulting increase in value between the date it was abandoned and the date of application to the IPC for restitution, is less than the value of the property when it was abandoned; *or*
- if there is no increase in the value of property between these dates; *or*
- if no building project has been approved by the competent authorities which would cause such an increase; *or*
- if such property in the north is not a property of equal value[75] acquired by any person, who on having to leave southern Cyprus, obtained title to such property in exchange for his/her property he/she left in the south of Cyprus,

the decision for restitution of such property may take effect after the settlement of the Cyprus problem and in line with the provisions of the settlement. However, in this case, the person who would have to abandon the property after settlement of the Cyprus problem, would not have to do so unless he/she has been compensated or provided with alternative accommodation under the provisions of a future settlement agreement. Therefore, the Law includes provisions which anticipate settlement of the Cyprus problem.

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[74] For example, if the property is allocated to a natural person.

[75] According to Law for Housing, Allocation of Land, and Property of Equal Value (Law No 41/1977), the TC administration adopted a points-based exchange system, which assumed that the abandoned properties in the north and south were of equal in value. The administration allowed TC owners to apply for and receive abandoned property in the north in exchange of their property left behind in the south, on the condition that the owners agreed to assign all rights relating to their properties in the south to the Turkish Cypriot Administration. Furthermore, the Law allocated GC property to migrants who came from Turkey after 1974 and settled ("settlers" is the term used by the GCs for them instead of migrants), victims of the conflict, TC resistance fighters, Turkish soldiers who fought in the 1974 war and settled, and TCs with insufficient income. (Law No 41/1977 was also addressed in Chapter 1; see also Ayla Gürel, Mete Hatay and Chrystalla Yakinthou, 'Displacement in Cyprus: Consequences of Civil and Military Strife Report 5' (Prio Cyprus Centre, Nicosia 2012, 13-14)

(ii) However, if the user of the property has improved it and,

- if the increase in the value due to improvement between the date it was abandoned and the date of the application to the Commission for restitution is more than the value of the property at the time it was abandoned; or if a project that would result in such an increase in value has been approved by the competent authorities,

exchange of property or compensation might be offered to such an applicant and the property concerned shall not be subject to the provisions stated above.[76] It should be added that if the applicant's claim is restitution of his/her property, and restitution is not possible according to the criteria envisaged in the Law, the Commission may offer "exchange" or "compensation" which the applicant is not obliged to accept and may await a political solution instead.

Thus, while considering restitution, the Law pays particular attention to the improvement of properties by current users. In practice, a situation where improvement is less than the value of the property between the date it was abandoned and the date of application to the IPC is unlikely to arise.

Representative X observes that, as a result of the limited conditions addressed above, properties which can be returned are generally situated in isolated areas,[77] an example being an application pursued by their firm, where access to the concerned property was almost impossible because of its location. Lawyer Achilleas Demetriades particularly points out to properties located in the fenced-off Varosha. According to him, since restitution is not possible for these properties, which is a military zone under Turkish control, the IPC should award "restitution after the solution of the Cyprus problem", and "compensation for loss of use until the property is returned".[78]

Although the conditions for restitution are limited, the ECtHR stated in *Demopoulos and others* that the choice of redress for breaches of property rights is left to Contracting States, who are in the best position to assess the practicalities, priorities and conflicting interests at the domestic level. The discretionary nature of

[76] For example, it should not be a property allocated to a person who had to abandon such property in the south.
[77] Interview with X, Representative (Nicosia, 4 December 2017)
[78] Interview with Achilleas Demetriades, Lawyer/Representative (Nicosia, 15 December 2017)

the restitutionary power of the IPC was not, therefore, considered to pertain to the effectiveness of the remedy.[79]

C. Exchange

A third remedy provided by the IPC law is "exchange of a property" in the south for one of equal value to that which the applicant claims in the north. If the property in the south is of a higher value than the one in the north, the applicant must pay the difference. However, if the latter is of a higher value than the former, the difference shall be paid to the applicant. Applicants requesting "exchange" may also claim compensation for loss of use and non-pecuniary damages arising from violation of the right to respect for their home.

As stated earlier, the IPC has ruled for exchange and compensation only in 2 cases so far, known as *Tymvios,*[80] where the applicant also had a case before the ECtHR.[81] The claim concerned 51 plots of land, and the Court, making reference to its previous case-law, held that there was a violation of Article 1 of Protocol 1 reserving the question of just satisfaction. In 2006, Tymvios applied to the IPC which granted him compensation of $1.2 million as well as the exchange of his land in Kyrenia (north), for a large TC owned plot situated in Larnaca (south).[82] In this regard, the parties informed the Strasbourg Court by letters dated 22 May 2007 that they had reached a friendly settlement including property transfer, and the applicant requested that the Court strike the case out of its list. The parties also submitted formal declarations dated 7 February 2008 and 15 February 2008, accepting friendly settlement with further correspondence on other matters. Thus, the Registry of the Court invited the Turkish Government to clarify the conditional nature of the transfer.[83] On 14 January 2008, the respondent Government informed the Court that

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[79] Para 118

[80] See <http://www.kibrisgazetesi.com/?p=290226> where the issue was also covered on 30 August 2008 accessed 6 December 2015

[81] *Eugenia Michaelidou Developments Ltd and Michael Tymvios v Turkey* App no 16163/90 Merits and Just Satisfaction (31 July 2003)

[82] Deniz Ş Sert, 'Cyprus: Peace, Return and Property', (2010) 23(2) JRS 238, 248; see also International Crisis Group, 'Cyprus: Bridging the Property Divide' (Europe Report No 210, 9 December 2010) 11

[83] Part of the declaration signed by the applicant which the Court received on 7 February 2008 was as follows: "I, Michael Tymvios, the applicant, declare that I have reached agreement with the Government of Turkey according to the terms of a settlement dated 21 May 2007 which provides for the payment of one million United States dollars to the applicant and the exchange of property insofar

the transfer would be executed in the RoC since this was outside its jurisdiction. As a result, the Court concluded that the settlement between the parties was based on respect for human rights as protected by the Convention and its Protocols, and it was equitable within the meaning of the Rule 75(4) of the Rules of Court.[84] It should also be noted that, although the RoC (the intervening party) submitted that due to bankruptcy the applicant was not able to enter into a friendly settlement agreement or to receive compensation, the Court stated that this might be of relevance only at the domestic level. Thus, the Court welcomed the agreement made between the parties and struck the case out of its list.

In August 2008, Mr Tymvios complained that despite the ECtHR's ruling, the GC Government refused to transfer ownership of the TC property in the south to him, and filed a case at the District Court of Larnaca against the Ministry of Interior, the Ministry of Education and the Larnaca School Commission.[85] A complaint was also lodged with the Committee of Ministers of the Council of Europe.[86] The Attorney-General in the south then intervened and settled the case. However, since there were schools on the relevant plots, they could not be let to the applicant. Therefore, the Government of Cyprus purchased the land from Mr Tymvios and the property was exchanged. The Attorney-General insisted that the Tymvios case did not set a precedent since there were special circumstances and the deal had been endorsed by the Strasbourg Court and brought to the attention of the Committee of Ministers. By contrast, the President of the IPC considered it a "landmark" case which would set a precedent for others.[87] As Achilleas Demetriades rightly predicted at the time, the

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as the exchange decision can be executed within the control and power of the authorities of the "Turkish Republic of Northern Cyprus." See para 13 of the Court judgment of 22 April 2008 (just satisfaction) (friendly settlement) and para 14 for the Government's declaration.

[84] Rule 75(4) reads as "If the Court is informed that an agreement has been reached between the injured party and the Contracting Party liable, it shall verify the equitable nature of the agreement and, where it finds the agreement to be equitable, strike the case out of the list in accordance with Rule 43 § 3."

[85] US Department of State, Bureau of Democracy, Human Rights and Labour, '2008 Human Rights Reports: Cyprus' (Human Rights Reports on Democracy 25 February 2009) (available at <http://www.state.gov/j/drl/rls/hrrpt/2008/eur/119074.htm> accessed 6 December 2015); the plot of land in Larnaca was protected under the Guardian Law and housed two schools, shops and businesses, See International Crisis Group, 'Cyprus: Bridging the Property Divide' (n 82) 11; see also the interview with Achilleas Demetriades by Rosie Charalambous <https://www.youtube.com/watch?v=dj1kBLjsGY0> accessed 8 December 2015

[86] See also International Crisis Group, 'Cyprus: Bridging the Property Divide' (n 82)11

[87] Stefanos Evripidou, 'IPC insists Tymvios case sets precedent', Cyprus Internet Directory (no date available) <http://www.cyprusedirectory.com/articleview.aspx?ID=25785> accessed 12 April 2017

Government of Cyprus "would have to give a plausible explanation for opposing a similar case of exchange in the future, considering it had already approved it once".[88]

The attitude of the Government in the south is not the only obstacle for "exchange" of properties since, as Çolak maintains, this option could be made more effective. Currently, the applicants requesting exchange are asked to propose a property in the south that would be acceptable to the defendant. But, there is no catalogue or list of properties capable of being offered through the IPC and applicants rarely receive an early or positive response.[89] As seen in the *Tymvios* case, better cooperation and coordination by both sides of the Cyprus conflict could make it easier for the IPC to operate.[90] Practical difficulties could for example be eliminated by way of a joint or parallel mechanism providing remedies for both GC property claims in the north and TC property claims in the south[91] as proposed in the Annan Plan.[92]

Lawyer Sağıroğlu also observed the difficulties for "exchange of properties" with respect to the practice before the IPC. He notes that, among those applicants he has represented so far, only one or two have claimed "exchange of property". One of these was filed in 2010 and following a preliminary friendly settlement meeting which took place approximately two years ago, still awaits a response from the defendant. Sağıroğlu states that, to accelerate the process, he has also provided details of the property in the south which the applicant wants to exchange. However, at the time of this interiew, the respondent has still been trying to find out if the TC owner of the property has received a property in the north in exchange for this property in the south and whether he relinquished his rights over this property in favour of the TRNC.

V. Challenges

In addition to issues integrated to the three remedies, the IPC has encountered five additional main problems: length and fairness of proceedings, transparency,

[88] See the interview with Achilleas Demetriades by Rosie Charalambous (n 85); see also Stefanos Evripidou, 'The government approves first ever land swap deal' *Cyprus Property News* (10 July 2012) <http://www.news.cyprus-property-buyers.com/2012/07/10/first-ever-land-swap-deal-approved/id=0012112> accessed 8 December 2015
[89] Çolak (n 3) 63
[90] Ibid
[91] Ibid
[92] Ibid

mortgages and other encumbrances over the properties on or before 20 July 1974, corporate ownership, and the execution of its decisions; i.e. payment of compensation.

A. Length and Fairness of Proceedings

Although the Attorney General's Office representing the Ministry is required to file a defence/opinion[93] within 30 working days from the notice of the application, this is not the case in practice.[94] Thus, for judgment to be delivered in such circumstances, applicants usually file an application by summons (a "default application") against the defendant in line with the Civil Procedure Rules of the Law Courts. However, since the IPC adjourns these applications, applicants do not have the opportunity to prove their cases and and obtain judgment.[95] According to Çolak, the number of land registry civil servants preparing relevant reports,[96] and the prosecutors preparing the opinions/defences in line with them should be increased.[97] Whether this would solve the length of delays issue is questionable.

According to the President of the IPC, the delays are not attributable to the IPC since it operates in line with its duties under Law No 67/2005 by serving the applications to the defendant within the legal period of time and awaiting an opinion to be filed to proceed further. He states that delays might have been minimised had there been more staff working at the Ministry of Interior, the relevant land registry offices and the Attorney General's Office.[98] In *Meleagrou and others v. Turkey,*[99] the first application brought at Strasbourg concerning this issue, the ECtHR has also ruled on the question of excessive length of proceedings before the IPC. The applicants claimed, among other things, that the length and unfairness of proceedings, and the lack of independence of the IPC, violated Article 6 (1)[100] of the

[93] It was stated earlier that this consists of a summary of the facts and an evaluation of the value of the relevant property in 1974 and also includes a statement of the current value of the property for the purposes of preliminary hearing.
[94] Çolak (n 3) 62
[95] O 26 r 10 of Civil Procedure Rules states, "*If the Respondent fails to deliver statement of defence in all actions other than the actions specified in the aforementioned rules of this order, the Plaintiff can apply through application by summons in order for a ju,dgment to be delivered and a decision which the plaintiff deserves can be delivered in accordance with the opinion of the court or judge*."
[96] It was stated previously that this is a report with details of relevant subject matter properties.
[97] Çolak (n 3) 62
[98] Interview with the President Ayfer Erkmen and the Vice-President Romans Mapolar (n 28)
[99] *Eleni Meleagrou and others v. Turkey* App No 14434/09 Admissibility (2 April 2013)
[100] The right to a fair trial by an independent and impartial tribunal

ECHR.[101] The Court noted that a period of four years and eight months, including the procedure at the High Administrative Court for appeal, had elapsed between the lodging of the application and its resolution which, it concluded, was not unreasonable given the newness of the procedure, the nature of the proceedings, the number of claims raised and the technical character of the property disputes concerned.[102] The Court rejected complaints of unfairness stemming from language difficulties at the IPC and the High Administrative Court on the grounds that the applicants were represented by a lawyer who understood Turkish, interpretation facilities were available and they were able to get translations of key documents in English.[103] The applicants' claim that the IPC lacked independence because the majority of the IPC and TRNC officials spoke Turkish, was also rejected on the grounds that no "concrete elements sufficient to establish bias or lack of independence" had been presented.[104] The applicants also alleged that their arguments were not fully adressed at the IPC and the High Administrative Court. Compensation for non-pecuniary damages was not awarded since "the applicants had not made claims in accordance with the provisions of the applicable law, and, as regards the one plot of land which had been subject to restitution, the IPC considered that as it was a field, no non-pecuniary damage from loss of enjoyment had been shown to arise".[105] As a result, the application was rejected as manifestly ill-founded according to Article 35(3)(a) and 4 of the Convention.[106]

It should be noted that, in this case, the applicants filed the application with the IPC on 7 November 2006. The direction stage which required the production of further documents in line with the Civil Procedure Rules took place in October 2007. The preliminary hearing was held on 19 November 2007 where the representative of the Ministry made a friendly settlement offer. A number of preliminary hearings were listed and adjourned during 2008 where the applicants further attempted to obtain a settlement agreement. The applicants' request for a hearing was made on 4 August 2008 and the hearings were held on 3 November 2008, 19 January 2009 and 5 May 2009. Finally, the IPC issued decisions on 14 October 2009.[107] According to

[101] Para 17
[102] Para 18
[103] Para 19
[104] Para 20
[105] Para 21
[106] Para 22
[107] Paras 4-5

Civil Procedure Rules, the direction meeting should take place after the defence is filed.[108] The delay in this case was mainly a consequence of the fact that the opinion/defence was not filed within the specified period of time as prescribed by Law No 67/2005; i.e. 30 working days upon the notice of the application to the defendant. As addressed previously, there are not enough civil servants investigating the properties, and prosecutors drafting the defences/opinions.[109] While concluding that the application was manifestly ill- founded regarding the lengthy delays, the ECtHR based its decision upon "the number of claims raised" and "the technical character of the property disputes". This raises the following questions: Is this conclusion reasonable? Did the government put forward any arguments capable of justifying the length of proceedings? When should the Court decide whether the proceedings fail to meet the reasonable time requirement? Was the delay imputable to the applicants?[110] If the total length of proceedings was 5 years 8 months would this still be reasonable? It can be said that the ECtHR uses various criteria to determine whether the length of proceedings is reasonable or not, some of which are related to the nature of the case (its complexity and what is at stake), while others concern the conduct of the parties (the applicant and the relevant authorities).[111] The Court has repeatedly emphasised in its judgments that:

> *[T]he "reasonableness" of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute. In addition, only delays for which the state can be held responsible can justify a finding of failure to comply with the reasonable-time requirement.*[112]

According to Ovey and White, Article 35(3) requires "an initial assessment of the substance of the case and enables the Court to deal effectively with its immense case-load" by eliminating unmeritorious cases at an early stage. The Court declares an application inadmissble if the allegations are unsubstantiated or do not suffice to find

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[108] Order 30, rule 1(a)(i) of the Civil Procedure Rules of the Law Courts in the TRNC
[109] Çolak (n 3) 62
[110] See *Smoje v Croatia* No 28074/03 Merits and Just Satisfaction (11 January 2007)
[111] Council of Europe, 'The length of civil and criminal proceedings in the case law of the European Court of Human Rights' (Council of Europe Publishing, Human Rights Files No. 16) 39
[112] *Frydlender v. France* App no 30979/96 Merits and Just Satisfaction (27 June 2000) para 43

a violation even if substantiated.[113] As stated previously, in *Meleagrou and others*, the Court declared the case to be "manifestly ill-founded" by referring to the "the newness of the procedure, the nature of the proceedings which incorporated a specific settlement procedure, the number of claims raised and the technical nature of property disputes".[114] However, the Court could have analysed the circumstances of the case in more detail to assess the reasonableness of the period of time the process took. For example, *Meleagrou and others* filed their application at the IPC in November 2006. A total of 12 applications were lodged in November 2006 and 21 in December 2006 with the IPC. The total number of applications in 2006 was 100. In 2007 and until the end of October 2007 (the date which the directionstage of the application took place[115]), 176 applications were submitted to the IPC. Considering the number of applications by October 2007, it can be said that there was no backlog of cases before the Commission at that time. Therefore, "the number of claims raised" should not have been raised as a ground for rejecting the applicants' claims in this respect. Furthermore, as stated previously the land registry reports contain information with respect to the ownership and the value of the properties concerned. Furthermore, the IPC issued its final decision in approximately three months following the hearing of the case, indicating that the issue was not that complex.

The issue of length of proceedings was also litigated before the High Administrative Court of the TRNC.[116] In application no 167/2010, the applicant's lawyer filed a "default application"[117] at the IPC requesting a final decision on the merits since the defendant had not filed its defence/opinion within the period of time prescribed by Law No 67/2005. The IPC rejected the request stating that Article 6 of Law No 67/2005 requires that, for a decision to be taken in his favour, the applicant must satisfy the Commission beyond any reasonable doubt as to the conditions

[113] Claire Ovey and Robin C A White, *The European Convention on Human Rights* (Oxford University Press 2010) 40

[114] Para 18 of *Meleagrou and others* (n 96)

[115] Direction stage is the part of the procedure according to Rules of Civil Procedure applied at the Law Courts. At this stage the parties to the application declares the documents which they will submit to prove their claims and the ones which they request from the other party.

[116] *K.V. Mediterranean Tours Limited ile Taşınmaz Mal Komisyonu arasında* [K.V.Mediterranean Tours Limited v Immovable Property Commission] YİM 262/2012, D 32/2015(6 November 2015) (This is the first instance High Administrative Court where the decision is given by a single judge and may further be appealed by the parties.)

[117] Filed by the applicant since the defendant did not file the opinion/defence within the legal period of 30 working days according to Article 3(8) of the Rules of the IPC. The applicant requested a final decision on the merits of the application through a default application according to O 26, r 2 of Civil Procedure Rules applied at the Law Courts of the TRNC

envisaged in the law. Among other things, the applicant claimed at the High Administrative Court that the decision of the IPC should be quashed since it arbitrarily postponed the "default application" eleven times without any reasonable grounds. The applicant also claimed that the IPC favoured the defendant by not giving a final decision on the merits of the application and argued that the rights of access to a court and to a fair trial, plus relevant provisions of the ECHR and the TRNC Constitution regarding the prohibition of discrimination, had been violated. It was further claimed that the decision of the IPC violated Article 1 of Protocol 1 and Article 13 of the Convention since no remedy was available within a reasonable time with respect to the applicant's property rights. Referring to Article 6 of the Law No 67/2005, the defendant stated that the applicant should prove the case beyond reasonable doubt and therefore, could not request a final decision on the merits from the IPC. Addressing the provisions of the Civil Procedure Rules,[118] the High Court stated that the IPC has the authority to decide whether the default application shall be postponed or a final decision given on the merits of the application. It further noted that the IPC has discretionary power and concluded that its decisions could not be considered encompassed by the concept of "negligence" for the purposes of administrative law. Therefore, although the applicant's "default application" of 1 November 2010 was repeatedly postponed from 7 December 2010 until 23 October 2012, the Court rejected the applicant's claims under this head, a decision subsequently appealed.[119] Referring amongst other things to the definition of "negligence" within the meaning of Article 152 of the TRNC Constitution, the High Court stated that negligence means that an authority, a body, or an individual, who or which exercises executive or administrative power, has failed to make a decision as required by law. Addressing the reasoning of the single judge and stating that the IPC

[118] Order 48, rule 6 "*Hearing of any petition can be adjourned from time to time depending on the conditions (if any) deemed suitable by the court or judge*"; Order 26, rule 10 "*If the Respondent fails to deliver statement of defence in all actions other than the actions specified in the aforementioned rules of this order, the Plaintiff can apply through application by summons in order for a judgment to be delivered and a decision which the plaintiff deserves can be delivered in accordance with the opinion of the court or judge.*"

[119] *Vakıflar Örgütü ve Din İşleri Dairesi ve Taşınmaz Mal Komisyonu ile K.V. Mediterranean Tours Limited* [Vaqf organisation and the Department for Religious Affairs and the Immovable Property Commission v K.V. Mediterranean Tours Limited] YİM/İstinaf: 12-13-14/2015, D. 6/2016 (29 November 2016) (According to Article 16 of Rules of High Administrative Court (1997), the decision of a single judge of the High Administrative Court can be appealed and this time the decision is given by a panel of three judges.)

has the authority to adjourn the default application, the High Court of Appeal[120] approved the decision of the single judge. Murat Hakkı, the lawyer in this case, considers the decision of the High Court as unfortunate because it left the issue of length of proceedings judicially uncontrolled. Achilleas Demetriades, the GC lawyer who was also an authorised reprensentative in this case before the IPC, states that if the procedural rules including time limits are not adhered to, the remedy cannot be deemed effective. He adds:

> *In a normal court procedure, the court gives you judgment in default. Everything is adjourned automatically at the IPC. In relation to the delays, there is no effective remedy to exhaust. Our argument at the ECtHR in the K.V. Mediterranean is that there are no remedies to exhaust.*

Murat Hakkı also notes that applications were filed at the ECtHR complaining that there are no effective domestic remedies for pending cases, in particular for those concerning properties located in the fenced-off area of Varosha at the IPC. He believes that the defendant and the IPC have no policy for dealing with such complaints. He further notes that he has almost 50 applications concerning properties in fenced-off Varosha, all pending for opinion/defence from the defendant. Although the defendant alleges rights of the Turkish Muslem Religious Trust (*Vakf*) over these properties in Varosha, Hakkı considers the issue to be political. According to Demetriades, a likely explanation is that a decision has been taken not to proceed with these applications due to the Turkish side's intention to open the area up. He also points to the cases filed at the ECtHR alleging that there is no effective remedy, particularly, for properties located in the fenced-off area.

In an interview on 10 March 2018, Ayfer Erkmen, the President of the IPC, stated that 275 cases related to properties in fenced-off Varosha are pending before the IPC.[121] It should be noted that a declaratory judgment of the Famagusta District Court of TRNC issued in 2005 states that the 1472 properties

[120] Composed of three judges

[121] 'Maddi Tıkanıklığı Aşacak Öneriler' [Proposals to Overcome Financial Burden] *Yenibakış Gazetesi* (10 March 2018) <http://www.yenibakisgazetesi.com/maddi-tikanikligi-asacak-oneriler/29697/> accessed on 29 April 2018

in fenced-off Varosha belong to Abdullah Paşa Religious Trust *(Vakf)*.[122] In any request for intervention, the IPC referring to this declaratory judgment, permits the *Evkaf* Foundation to be involved as a third party in its proceedings.[123] In case no 1/2017[124] lawyer Murat Hakkı attempted to challenge the said declaratory judgment of the Famagusta District Court stating, among other things, that according to land registry records his client is the legal owner of Argo Hotel located in fenced-off Varosha as of 20 July 1974. The High Court, consisting of a single judge, rejected the claimant's requests stating that he had no *locus standi* before the Court to ask for remedies other than those he might claim before the IPC provided by Law No 67/2005. Hakkı appealed and the High Administrative Court, consisting of a panel of three judges, also rejected the claims. However, the Court noted that, while the IPC could consider the matter, it could only take the title deeds for 1974 to decide who the legal owner of the properties was at that time. This means that the IPC does not have the power to change Land Registry Records for 1974 or to decide whether there had been fraudulent acts against *Evkaf* back in the 1900s with respect to transfer of relevant properties.[125] Thus, the declaratory judgment of Famagusta District Court does not have a negative impact on applicants' rights over their properties. It should be stressed that, in a number of cases at the ECtHR, *Evkaf* also sought leave to intervene as a third party alleging that it was the owner of some of the properties claimed by the applicants and that the latter had registered them in

[122] The judgment is only declaratory and thus, the District Court did not order modification of the land registry records. *1) Vakıflar Örgütü ve Din İşleri Daires, Abdullah Paşa Vakfının Emaneten İdarecisi ve Temsilcisi Sıffatıyle, Lefkoşa 2) Vakıflar Örgütü ve Din İşleri Dairesi, Lefkoşa ile KKTC Başsavcısı, Lefkoşa* [1) Vaqf organisation and the Department for Religious Affairs, as the Trusted Advisor and Representative of the Abdullah Pasha Vaqf, Nicosia 2) Vaqf organisation and the Department for Religious Affairs, Nicosia v. the Attorney-General of the TRNC]Gazimağusa Kaza Mahkemesi Dava No: 271/2008 *(*27 December 2005)

[123] The issue has also been brought before the High Administrative Court; *Vakıflar Örgütü ve Din İşleri Dairesi ve Taşınmaz Mal Komisyonu ile K.V. Mediterranean Tours Limited arasında* [*Evkaf* Foundation - Directorate of Religious Affairs and Immovable Property Commission v K.V. Mediterranean Tours Limited] YİM/İstinaf: 12-13-14/2015, D. 6/2016 (29 November 2016)

[124] *Akinita I. Th. Ioannou & Yi Limited ile Vakıflar Örgütü Ve Din İşleri Dairesi ve diğerleri arasında* [Akinita I. Th. Ioannou & Yi Limited v Vaqf organisation and the Department for Religious Affairs] Yargıtay/Asli Yetki/İstida No: 1/2017 (Gazimağusa Dava No: 271/2000) D. 1/2018 (13 March 2018); *Giagkos Filippou yetkili vekili Maria Philippou vasıtasıyla ile Vakıflar Örgütü Ve Din İşleri Dairesi ve diğerleri arasında* [Giagkos Filippou through his duly authorised representative v Vaqf organisation and the Department for Religious Affairs] Yargıtay/Asli Yetki/İstida No: 2/2017 (Gazimağusa Dava No: 271/2000) D. 2/2018 (13 March 2018)

[125] *Akinita I. Th. Ioannou & Yi Limited ile Vakıflar Örgütü Ve Din İşleri Dairesi ve diğerleri arasında* [Akinita I. Th. Ioannou & Yi Limited v Vaqf organisation and the Department for Religious Affairs] Yargıtay/Asli Yetki/İstinaf No: 1/2018 (Yargıtay/Asli Yetki İstida İstinaf No:2/2018 ile konsolide (Yargıtay/Asli Yetki İstida No: 1/2017) D. 2/2019 (13 March 2018)

their own names according to the principles set out in the "Ahkâm-ül Evkaf Laws". Turkey, the respondent, had pointed out that the property allegedly owned by the applicant was listed in the books of the Turkish Muslim religious trust (*vakf*) and thus, following the registration of a deed of *vakf*, it could not be alienated or transferred. The respondent maintained that the transfer of this property to the applicant was unlawful and therefore, null and void. However, the Court noted that the applicant had provided the Court with official certificates of ownership from the Department of Lands and Surveys of the Republic of Cyprus which proved that she was indeed the owner of the relevant property. It had also been claimed that the respondent Government had not substantiated its case against the applicant's victim status.[126] This has significant implications with respect to *Evkaf*'s claims on properties in fenced-off Varosha. *Evkaf* claims that relevant properties in this zone had been illegally transferred to other persons in the 1900s. Since then, the said properties had belonged and been used by third persons other than *Evkaf*. Hakkı, objecting Evkaf's claims, supports that the properties concerned should be returned to their lawful owners as shown by the 1974 land registry records.[127] Most importantly, even if the alleged claims by *Evkaf* were accepted, it should be remembered that in *Demopoulos* the precedent had been based on the fact that:

[.....] many decades after the loss of possession by the then owners, property has in many cases changed hands, by gift, succession or otherwise; those claiming title may have never seen, or ever used the property in question . . . The losses thus claimed become increasingly speculative and hypothetical. There has, it may be recalled, always been a strong legal and factual link between ownership and possession . . . and it must be recognised that with the passage of time the holding of a title may be emptied of any practical consequences.

In other words, accepting Evkaf's claims would result in a serious setback for current users of GC properties in the north as recognised by the ECtHR in *Demopoulos*. In the final analysis, demilitarization of the fenced-off Varosha would enable the IPC to

[126] *Xendies- Arestis* App no 46347/99 Admissibility (14 March 2005)
[127] Ödül Aşık Ülker, 'Maraş'ın Vakıf Malı olduğu İddiaları Gayrı Ciddi' [Claims for Varosha belonging to Evkaf are Unserious] *Yenidüzen* (30 June 2019) <http://www.yeniduzen.com/marasin-vakif-mali-oldugu-gayri-ciddi-116432h.htm> accessed 27 November 2019

award restitution after the solution of the Cyprus problem. This could prevent the ECtHR from deciding that the IPC is not an effective remedy. In this case, awarding loss of use would be necessary. Considering the continuing delays in payments of IPC awars as a result of lack of financial resources, this burden could almost be impossible to carry out, which would bring us back to square one. It should also be recalled that the members of the Security Council reminded, in October 2019, the previous UN Security Council resolutions, including resolution 550 (1984) and resolution 789 (1992), reiterating that no actions should be carried out in relation to Varosha that are not in accordance with those resolutions.[128] In either way, the process should be inclusive of stakeholders.

Lawyer Tarık Kadri also argues that the IPC cannot be considered as an effective remedy for applications concerning properties in the fenced-off Varosha. He notes that the defendant has only filed a defence/opinion in 5 of the applications he has been pursuing which were submitted to the IPC in 2010. He maintains that *Evkaf* intervened as the third-party, that the applications are pending, and this has no legal basis according to the requirements in the IPC law to prove ownership. As outlined previously, Article 6 (2) states that the applicant shall prove the property was registered in his name before 20 July 1974 and/or he is the legal heir of the individual in whose name the immovable property was registered. On the other hand, *Evkaf*'s intervention to the said applications as third-party does not mean the final decision will be in their favour. However, Kadri is pessimistic in this regard, and how the IPC will decide these applications remains to be seen. As indicated in Chapter 2, the opening of the fenced-off Varosha (ghost city) has been among the confidence building measures (CBMs) produced by the UN Secretary General in 1992 and was one of the most important measures that were seriously discussed by both sides under UN auspices. In addition, at various times, the UN Security Council called for this area to be handed over to the UN prior to its resettlement by its rightful inhabitants.[129] Having been fenced-off by the Turkish army in 1974, it has always been assumed that Varosha would be among the areas to be returned to GC administration as part of any territorial adjustment in the framework of a comprehensive solution. Under the given cirucmstances, it can be said that the area will remain as a challenge for the IPC as a result of the fact that such applications

[128] See https://www.un.org/press/en/2019/sc13980.doc.htm
[129] UN Security Council Resolution Res 550 S/Res/550 (11 May 1984)

have no prospect of moving ahead unless there is political will. In August 2019, the TRNC government has initiated a process to open the area up under the TRNC administration. For this, meetings have been held under the auspisces of the TRNC Foreign Ministry while the Foreign Minister emphasized back in August 2019 that they have no intention to include the GC administration in the process.[130] More recently, another neeting was held in February 2020 in the fenced-off Varosha in the presence of Republic of Turkey Vice-President, other Turkish officials, the TRNC government officials, the IPC President and a few associations sharing similar views with those of the TRNC government and Turkish government. The meeting was protested by various NGOs, GCs and some left-wing political parties calling it a provocative step for short-term political gains prior to the presidential election in April. The TRNC President Akıncı who was not invited to the said meeting criticised it stating that any step should be taken without being in contravention to the UN and with the intention of contributing to the solution of the Cyprus problem. Main opposition Party CTP has not attended the meeting either, criticising, in particular, the absence of the President Akıncı where the issue of fenced-off Varosha is undeniably included within his duties and powers.[131] Apparently, the issue of fenced-off Varosha is being carried out behind closed doors in the absence of an inclusive process, not only without the right holders (GCs) but also without acamedia from different backgrounds, NGOs and political parties having different views on the issue. This issue is an example of how piecemeal approaches could have a negative impact on the views of other stakeholders in the absence of an inclusive process.

In a more recent *Joannou v Turkey* case, the ECtHR held that Article 1 of Protocol No 1 had been violated because the manner in which the IPC had proceeded

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[130] 'Kapalı Maraş'ta "Hukuki, Siyasi ve Ekonomik Yönleri ile Kapalı Maraş Açılımı" başlıklı yuvarlak masa toplantısı yapılacak' [A round table meeting called "Legal, Political and Economic Aspects of the initiative for fenced-off Varosha" will be held in the fenced-off Varosha] *BRT* (13 February 2020) <https://pio.mfa.gov.ct.tr/kapali-marasta-hukuki-siyasi-ve-ekonomik-yonleri-ile-kapali-maras-acilimi-baslikli-yuvarlak-masa-toplantisi-yapilacak/>; Evi Andreaou 'Protest Planned as North Discusses Opening of Varosha' *Cyprus Mail* (15 February 2020) <https://cyprus-mail.com/2020/02/15/protest-planned-as-north-discusses-opening-of-varosha/; 'Özersay: Rum Liderliğini Maraş sürecine dahil edecek yaklaşımlardan uzak durulmalı' [Özersay: Any steps to include the Greek Leadership in the Varosha process should be avoided] *BRT* (13 February 2020) <https://pio.mfa.gov.ct.tr/ozersay-rum-liderligini-maras-surecine-dahil-edecek-yaklasimlardan-uzak-durulmali/>

[131] 'Erhürman'dan Maraş Açıklaması: "Doğru Değil"' [Varosha Statement by Erhürman: This is not Right] *Yenidüzen* (12 February 2020) <http://www.yeniduzen.com/erhurmandan-maras-aciklamasi-dogru-degil-123835h.htm>

lacked 'coherence, diligence and appropriate expedition' as this provision requires.[132] The ECtHR noted that the proceedings before the IPC, which began in 2008 and had still not been formally concluded by 2017, were marked by repeated requests by the authorities for the applicant to submit additional documents and that the IPC itself had "remained passive as regards these ... making no effort to assess their reasonableness or relevance or to ensure that the parties' submissions were properly obtained and administered".[133]

Murat Hakkı states that only about 30-40 of 250-300 applications he has been pursuing have been finalised and paid. Approximately 4-5 applications have been pending for payment while 3-4 have not even been given a hearing date for the last two years. For the rest of his applications, the defendant has not filed an opinion/defence. Hakkı adds that the defendant Ministry and the Attorney General's Office claim that they prioritize applications in line with their date of submission to proceed. This is neither reasonable nor fair since some applications might be processed promptly by the relevant land registries, as a result of the fact that they do not concern complex issues or the land registry in question might have less applications before it while this might not be the case for others. However, uncomplicated applications nevertheless wait for a considerable time as a result of the "policy" of chronological assessment by year of submission.

Having nearly 150 applications before the IPC, Lawyer Minhan Sağıroğlu states that 95% of these have been pending for an opinion/defence from the defendant.

Representative X pursing almost 2,200 aplications including the finalised ones before the IPC, states that 684 of these were filed in 2011 and 111 of these have still been pending for the opinion/defence by the defendant. According to X, this is one of the most criticised issues before the IPC and a fatal one since, as the time goes by, some applicants pass away. In addition, the Attorney General's Office has proposed that payment to the estate of the deceased was not possible, a matter the IPC leaves to the discretion of the defendant, creating another issue for applicants. As addressed previously, the Attorney General's Office reconsidered its position in this regard, but the implementation remains to be seen.

[132] *Joannou v. Turkey* (n 70) para 104
[133] Ibid paras 91-106

Applicant 1, having applied to the IPC in 2013, claims that his application concerning more than one property, one of which is the family home where he used to live together with his parents and brother, is still pending for an opinion/defence from the defendant. He complains about the length of proceedings before the IPC adding that there is nothing he can do to overcome this. He feels it is unfair to wait for such a long time, but notes that he has not heard of finalised cases which were filed later than his finishing earlier in an unfair manner. Despite delays, this applicant frankly states that his compaint is not about the IPC itself, because, he considers it to be under the control of Turkey which offers applicants a "take it or leave it" choice.

Applicant 2 submitting his application to the IPC in 2010, states that it was finalised in 2014 and was paid in 2018. The case concerned a water source and citrus fields:

> *The property belonged to my father in 1974 and he later transferred it to me. We used to derive our revenue from this field. I used to work with my father in this field so I have emotinal links to it. I also filed another application to the IPC in 2013 for another property, a cornfield. The latter is still pending. In the very beginning, I never thought to apply to the IPC. I also thought that there will be a comprehensive solution in Cyprus. In the south we have a system; for displaced Greek Cypriots the government provides us with loans with low interest rates. Recently, it has been very difficult to benefit from this system though, and I have economic problems.*

Applicant 3 records that he has not experienced any kind of unfairness yet, adding his case is not at the payment stage.

Pavlos Loizou was paid after a year his application was finalised at the IPC, but he states that this was because he had brought his case to the ECtHR. He complains about the lengthy procedure at the IPC and the distress he has suffered including the period of time which passed since he first applied to the Strasbourg Court in 2004 before he was referred to the IPC. Expressing his disappointment as a result of the rejection of the Annan Plan in 2004, he stresses that he applied to the IPC since he could not have awaited a political solution to the Cyprus problem.

Another issue having an impact on the length of proceedings is the limited number of hearings held only three times a year when the two foreign IPC members

are present.[134] The President and Vice-President of the IPC were inclined to give the number of pending applications forhearing.[135] The Vice President Mapolar states that there are several reasons for the delays: The Commission consists of seven members, the two foreign members live abroad and are present for hearings only three times a year, and there have been practical difficulties as a result of intervals between those periods. He proposes that the IPC could have held more hearings and could have worked more efficiently if it had convened in the form of committees consisting of smaller number of members, each chaired by the President and/or the Vice-President. The President also agrees that more hearings should be held, but he also adds that other reasons such as inviting the valuation experts and other witnesses to testify before the IPC have prolonged hearings. Article 11(2) of the Law states that it is possible for the IPC to convene by a minimum of a two-thirds majority of the total number of members and to take decisions by an absolute majority of those attending. However, the IPC is not willing to hold hearings in the absence of the two foreign members, a positive indicator of its objectivity, though causing delays. Another factor causing the delays is the fact that research reports prepared by the relevant land registry offices include the status of ownership in 1974, current user of the property (if any), the value of the property in 1974 and its current value which take time to compile. Assuming that it might take longer to evaluate the property concerned, the IPC and/or the Ministry of Interior could classify applications where the main claim is exchange or restitution to provide for an accelerated procedure for these applications, instead of awaiting adjournment for additional research on the conditions of the property as envisaged by Law No 67/2005. Another solution might be to amend the legislation, to include an automatic admissibility stage to determine whether the applicant has *locus standi* under Law No 67/2005.

B. Transparency

The criteria under which the IPC can award compensation are provided by Law No 67/2005, but since decisions of the IPC are not made public, it is difficult to determine how it applies the statutory criteria. However, if the applicant appeals to

[134] Çolak (n 3) 62 (Currently the the IPC holds hearings three times a year. Thus the applicants requesting a hearing date wait for a considerable period of time)
[135] Interview with the President Ayfer Erkmen and the Vice-President Romans Mapolar (n 28)

the High Administrative Court some light can be shed on the matter. In application no. 23/2008,[136] for example, one of the arguments before the High Court was that the IPC's decision was not reasoned. In arriving at its verdict, the High Administrative Court considered whether the material and legal reasons could, nevertheless, be inferred from its decision. It noted that, while the IPC awarded £2.5 million for loss of use and market value, it did not set out how it arrived at this figure and how much had been awarded separately under each head. The IPC stated that "in assessing the value of the property" it had taken "into account the purchase price of 135,000 Cyprus Pounds paid in 1973; the purchase price of GBP 1,400,000 agreed in 2006; the offer of the Interested Party in 2007 to pay GBP 1,750,000 for the property".[137]

The High Administrative Court quashed the IPC's decision on the grounds that it had been delivered without justification because, although during the hearings, expert witness testimonies were heard and reports submitted as exhibits, the Commission had failed, as required by Law No 67/2005, to explain how the sum of £2.5 million had been determined, indicating in particular to which pieces of evidence it had given credit, how much weight had been attached to them, and which had been discarded.[138] The parties to the case appealed but the case was withdrawn once the IPC decided to revise its decision.

Applying the phrase used by the ECtHR in its just satisfaction decisions,[139] the IPC has stated that it makes an "equitable assessment" when deciding on the amount of compensation. While this may, prima facie, seem laudable, merely invoking the Court's terminology is no substitute for a reasoned explanation. Furthermore, on the grounds that it militates against consistency and predictability, commentators have criticized the Court itself for not disclosing the basis of its calculations in determining the quantum of just satisfaction awarded.[140] For example, according to Mowbray, "the Court's consideration of damage claims reveals a worrying lack of transparency in the reasoning" and, ironically, while it criticized the

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[136] *Acapulco Holdings Limited ile 67/2005 sayılı Yasa tahtında oluşturulan KKTC Taşınmaz Mal Komisyonu arasında* [Acapulco Holdings Limited v Immovable Property Commission established under Law No 67/2005] YİM 7/2013-8/2013, D. 13/2007 (18 May 2017)

[137] ibid

[138] Article 4 of Law No 67/2005 reads as "Compensation to be paid under section 8 (4) of the Law shall be determined by the Commission in an equitable manner and in accordance with the criteria enumerated in the said section and, if any, by taking into account the opinions of the experts."

[139] See for example *Xenides-Arestis v Turkey* App No 46347/99 Just Satisfaction (7 December 2006)

[140] Alastair Mowbray, 'The European Court of Human Rights' Approach to Just Satisfaction', [1997] Public Law 647, 650

applicant's method it "totally failed" itself to provide any basis for its own determination.[141] Furthermore, in view of the fact that the IPC considered the applicant's claims ex officio, and offered a method for the calculation of pecuniary damages in *Xenides-Arestis*,[142] it is difficult to understand why it has been so reluctant to provide reasons for its own awards. The Vice-President noted that there have been eight applications to the High Administrative Court by the parties against the decisions of the IPC claiming that the decisions were unjustified. In this respect, the IPC has started to revise its decisions.[143]

"Transparency" is also relevant for offers made by the defendant at friendly settlement meetings. Lawyer Y notes that the Ministry of Interior claims to make offers according to comparable sales from finalized applications before the IPC and/or similar properties around or in the vicinity of those subject to the application in question. Although the Ministry increases the values to a certain extent while making an offer, Y argues that details of comparable sales are not being set forth transparently by the Ministry of Interior. Furthermore, although the Ministry claims that a sum for loss of use is also included in the amounts offered, since these are not separated, applicants are unable to distinguish the value of their properties from the amount for loss of use.

Lack of transparency is also an issue regarding payment of compensation, execution of judgments and fairness of proceedings. Claiming that the process with respect to payments is not transparent, lawyer Sağıroğlu, gave a recent example from his files to illustrate that some representatives are given priority over others with respect to payments. Although a particular file had been finalized before another, the latter was paid earlier:

> *There was a finalised application which they paid approximately two months ago, I have realised that there have been other payments for more recent decisions, but the one I mentioned was paid after those.*

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[141] ibid 650

[142] See *Xenides-Arestis v Turkey* (n 139) para 26

[143] The interview with the President Ayfer Erkmen and the Vice-President Romans Mapolar (n 28) The Vice-President noted that there have been eight applications to the High Administrative Court by the parties against the decisions of the IPC claiming they were unjustified. At the time of this interview one of these cases was been pending before the three-judge panel (*Acapulco Holdings Limited* as indicated above), two before the single-judge panel and one quashed by the High Administrative Court for which the IPC delivered its resoned decision. The rest of the applications were withdrawn.

He believes that the IPC should interfere to prevent unfairness during the process.

On the other hand, according to representative X, neither the IPC nor the Ministry of Interior have responsibility for the timing of payments since this is the responsibility of the Ministry of Finance.

According to Tarik Kadri, the fact that the process of payments is not transparent has been causing arbitrariness tantamount to abuse of power by the Ministry of Interior and the Ministry of Finance:

> *I have seen applications awaiting payment for three years. There have been payments for more recent applications but not for older dated decisions. I believe that there's an unfairness related to the order of payments. The Ministry of Finance has discretion regarding the order of payments and I believe that this discretionary power is not being used in line with objective criteria.*

During the interview of 2 July 2018, neither the President nor the Vice-President wanted to comment on this, stating that payment of compensation is the responsibility of the Ministry of Interior and the Ministry of Finance. The information regarding the amount paid so far has not been provided on the IPC's web-page. In this regard, it can be queried whether the process is fully transparent. The fact that the Ministry of Interior and the Ministry of Finance are responsible for execution of awards might be the reason. However, this is not an adequate ground against greater transparency. Article 13 of Law No 67/2005 provides that the IPC has the power "to take necessary measures and decisions in order to conclude the proceedings concerning the amount of compensation to be paid to the applicants". However, the IPC in fact absolves itself from the process of execution and the powers in this respect have not been used so far. A solution could be to amend the IPC Law in order to place execution proceedings under the supervision and contol of the IPC.

A new database containing detailed information on applications, except for those where a special decision for confidentiality has been taken by the IPC, is required to provide further transparency about the IPC's processes.

C. Mortgages and other encumbrances

Another problem faced by the IPC arises from the fact that the Ministry of the Interior is unwilling to make an offer for friendly settlement and to take over properties unless encumbrances, such as mortgages created on or before 20 July 1974, have been discharged. Applicants have two choices in such circumstances. They can either contact the lender (usually a bank – and if not applicants face further problems as revealed by the interviews carried out with lawyers) to have the encumbrance discharged from the title at the Land Registry Office in the north, or file a case at the relevant District Court in the north to have it cancelled. However, the former is very difficult in practice and obtaining a decision from the Law Courts to cancel a mortgage is also time consuming in some cases. Nevertheless, it can be achieved as two applicants to the IPC proved the first time the mortgage issue was brought before the law courts of the TRNC.[144] Both the District Court and the Court of Appeal cancelled the mortgage in question stating that the applicant proved that the payment had been made.[145]

The obligation to discharge mortgages/encumbrances on abandoned property might be considered an obstacle for applicants in IPC litigation, since it involves interests in addition to those of the applicant. But it is not a matter which the domestic legal system can simply ignore. There is, however, scope at the preliminary hearing stage for improving how this issue is managed. Currently, the Ministry does not make an offer where there are mortgages/encumbrances on the property and, in such circumstances, the IPC also postpones the application indefinitely. A new preliminary hearing date is only provided once it has been proven that the mortgage/encumbrance has been discharged. However, if a conditional offer were made at the first preliminary hearing, the IPC could reach a final decision once all the requisite documents had been submitted without the need for a second preliminary hearing.

Lawyer Murat Hakkı, who acted for *Christopher Stylianou* as outlined above, also considers the issue of mortgages as an obstacle for applicants. Hakkı mentions

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[144] *Girne Tapu Dairesi vasıtasıyla KKTC Başsavcılık v Christopher Stylianou ve diğeri arasında* [TRNC Attorney General's Office through Kyrenia Land Registry Office v Christopher Stylianou and others] YİM 66/2014 D. 20/2015 (18 May 2015). The applicant filed the application at the District Court on 10 December 2013 to have the mortgage cancelled and got the verdict from the Court of Appeal on 18 May 2015. The Attorney General's Office had applied to the Court of Appeal against the District Court's decision for cancellation

[145] The decision of the District Court was appealed by the Kyrenia Land Registry Office represented by the Attorney General's Office

that he was surprised when the Attorney General's Office strongly argued at the District Court that a 43-year old mortgage still existed, while, the creditor Bank of Cyprus did not even appear to claim the existence of such a debt. According to Hakkı, Law No 24/1979 of the RoC cancelled the mortgages existing on or before 1974 over GC properties abandoned in the north. However, the TC authorities insist that this law has no applicability in the north. Hakkı filed another case in this respect, rejected by the Famagusta District Court currently pending for hearing at the Court of Appeal. According to him, whether a debt exists or not should be determined by the legislation governing the conditions giving rise to it. Since debts, and thus mortgages, concerned here were created in line with the laws of the RoC, their extinction should be assessed according to these. Thus, Hakkı contends that the issue of mortgages, being an obstacle for GCs before the IPC, could be solved if the TC authorities, taking Law No 24/1979 into account, deemed the said mortgages extinct. Lawyer Tarik Kadri agreeing with Hakkı, states that the procedure prevents applications being processed before the IPC. He adds that, bringing the creditors to the land registries in the north to have the mortgages discharged is almost impossible, not least because of non-recognition of the TRNC authorities in the north by them. He also refers to previous practice which was simpler where the applicants used to submit a statement from the creditor that "the debt in question no longer existed". He notes that he finalised an application by submitting this statement to the IPC, whereas in another file with the same mortgage, the same document was not accepted as a result of the change of stance of the defendant. On the other hand, lawyer Minhan Sağıroğlu is of the opinion that the recent practice with respect to mortgages is in line with the relevant legislation in the north, but is not practical. He suggests that, instead of obliging applicants to apply to district courts and to prove payment of debts, mortgages could be discharged from the land registry books through examination of documents submitted by them including a written statement from the creditor showing the debt no longer exists. According to Sağıroğlu, the current process of obtaining a court order to have the mortgage discharged is time consuming. He also points out that the Attorney General's Office obliges applicants to appear during the court proceedings which causes an unreasonable burden, particularly for older ones. Representative X also agrees that the current practice regarding mortages is a clear and correct one which prevents abuses. However, when the creditor is a natural person, there might be problems if he/she passes away. In cases such as these, it is

highly difficult to find legal heirs for necessary procedures. Presenting the same difficulties, lawyer Y states that a more practical way such as reserving the amount of debt in a fund or an account for any possible future claims by creditors can be found.

Referring to the current procedure to have the mortgages discharged through an order of the law courts and stating that applicants file search documents at the IPC showing that there are no mortgages and/or encumbrances over the properties, Achilleas Demetriades states:

> *[…] this means the IPC does not recognise the documents issued by the Republic of Cyprus They recognise the title in relation to the ownership, but not in relation to the extinction of mortgages. People declared their ownership and got title deeds, the same applies for mortgages as well, they declared that the mortgage is extinguished, so it should be accepted. If you recognise the title deed of the Republic of Cyprus, by logical implication, you have to recognise the charges as well, if the documents say there are no charges on that title you have to recognise that as well.*

In fact, this is because the original land registry records showing ownership and other encumbrances on or before 20 July 1974 are with the Turkish authorities. Thus, the Ministry of Interior and the Attorney General's Office assert that encumbrances could only be discharged after going through the necessary procedures governed by the legislation in the TRNC. However, according to Demetriades, if the IPC were willing to solve this issue, other ways could have been found to overcome the problems with mortgages. One solution could be to set the amount of mortgage aside and make an offer accordingly as Demetriades suggests. He further notes that, the opportunity to object, if any, by creditors could be provided through publications in newspapers in the RoC. As Demetriades claims, interrupting the whole procedure because of mortgages is not reasonable.

D. Execution of Judgments Awarding Compensation

Problems regarding the payment of compensation, including the lack of provision for interest, have also arisen.[146] For example, Murat Hakkı, a lawyer who represented an applicant at the IPC in application no. 1496/2011, filed a writ of seizure and sale (to enforce court decisions) for eleven cars, possessed by the TRNC Ministry of Finance and Ministry of Agriculture, in respect of which the IPC had awarded his client £2,121,830.[147] On 9 July 2015, the Chief of the Nicosia District Court Registry requested a directive from the Nicosia District Court to dismiss it. On 10 July 2015, the District Court of Nicosia cancelled the writ stating that the applicant had not signed the friendly settlement agreement relinquishing his rights over his properties and that, under these circumstances, the decision of the IPC could not be executed. The applicant appealed.[148] Referring to Article 14 of Law No 67/2005 and Article 6 of the Rules of the IPC, the appellant claimed that the decisions of the IPC have binding effect and, like the judgments of the judiciary, are executory and should be implemented without delay upon service to the authorities concerned within a period of one month. Hakki also claims that the relevant friendly settlement agreement[149] should have been signed simultaneously with the payment of the agreed compensation. In other words, it was alleged that the agreement is intended to act as a receipt confirming payment and full satisfaction of the award. The Court of Appeal affirmed Article 14 of Law No 67/2005, which provides that: "The decisions of the Commission have binding effect and are of an executory nature similar to judgments of the judiciary. Such decisions shall be implemented without delay upon service on the authorities concerned." But it observed that the IPC Law did not make the procedure and mode of enforcement clear. Article 6 of the Rules of the IPC was also noted. The first three paragraphs of this provision are as follows:

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[146] '35 milyon borçluyuz' ['We owe 35 million'], *Yeni Bakış Gazetesi* (12 July 2015) <http://www.yenibakisgazetesi.com/35-milyon-borcluyuz/2552/> accessed 27 January 2016 (Güngör Günkan made a statement as a result of an applicant's lawyer filing a 'writ of seizure and sale' and mentioned that there are still applications awaiting for payment). See also Çolak (n 3) 62

[147] 'Bakan arabalarına Rum haciz koydurttu' ['Seizeure over vehicles of the Minister'], *Havadis Gazetesi* (7 July 2015) <http://www.havadiskibris.com/bakan-arabalarina-rum-haciz-koydurttu>; 'Karar var Ödeme yok' ['There are Decisions but not Payments'], *Gündem Kıbrıs* (10 December 2015) <http://www.gundemkibris.com/tmk-tehlikede-158344h.htm> accessed 5 April 2017

[148] See *Christopher Stylianou ile İskan İşleri ile Görevli Bakanlığı ve/veya Bakanlığı temsilen KKTC Başsavcılık arasında* [Christopher Stylianou v Ministry of Interior represented by the TRNC Attorney General's Office] Yargıtay/Hukuk No: 129/2015 (Genel İstida No: 39/2015), D.50/2015 (3 December 2015)

[149] This is Form No 3 attached to the Rules of the IPC, see Article 6

6. (1) The Ministry responsible for Housing Affairs shall execute the decision of the Commission relating to restitution, exchange, compensation in lieu of the immovable property, compensation for non-pecuniary damages due to loss of the right to respect for home and compensation for loss of use. In execution of such decision, the Ministry responsible for Housing Affairs shall prepare a draft friendly settlement agreement in accordance with Form 3 and serve it to the applicant who has demonstrated his legitimate rights together with an invitation letter.

(2) The invitation letter shall state that the applicant who has demonstrated his legitimate rights should either personally or through a representative come to sign the draft friendly settlement agreement within one month. Otherwise, the draft friendly settlement agreement will be deemed rejected and he shall have the right to apply to the High Administrative Court.

(3) Should the applicant who has demonstrated his legitimate rights either personally or through his representative accept the draft friendly settlement agreement, this draft shall be signed by the Minister responsible for Housing Affairs and by him or his representative.

In this respect, the Court held that, unless the steps described above are taken, a decision of the IPC is not "complete". It further addressed paragraph 5 of the same provision which states that the interested parties have the right of appeal if the dispute is not resolved through a friendly settlement agreement. As a result, the Court concluded that, until the friendly settlement agreement is signed by the parties, the defendant is not obliged to pay compensation awarded by the IPC and thus, it is not possible to file a writ of seizure and sale against the defendant for execution of the decision.

This is a surprising judgment. As maintained previously, a friendly settlement agreement is signed simultaneously with the payment of the agreed compensation. By signing it, applicants relinquish all their rights over their properties. In the presence of an official of the relevant land registry, they also sign land registry documents to transfer their properties to the TRNC. Thus, the issue of payment of compensation, which, in fact, is the execution of a decision of the IPC, and the issue of "signing a friendly settlement agreement" are closely related. In addition, "the

binding effect of the IPC decisions" cannot be considered separately from them since, otherwise, the defendant would have sole authority to initiate the process for payment. The execution of a judgment or an award issued by any court or tribunal is an integral part of the trial and the remedy provided would be illusory if a binding decision remained inoperative. As expressed by the Court of Appeal, Article 14 of Law No 67/2005 does not provide a mechanism and/or a procedure for the enforcement of IPC decisions. Thus, the applicant, pursuant to Article 9 of the Rules of the IPC, resorted to the Civil Procedure Rules applied at the Law Courts to enforce the relevant decision.[150] By concluding that the enforcement of IPC decisions is only possible following the signing of the friendly settlement agreement, the Court, in fact, decided that they can only be enforcable once the applicant is fully satisfied by the payment of the compensation awarded. In other words, since the applicants are fully satisfied on the day of signing the friendly settlement agreement, it should not be necessary for them to proceed for the execution of a decision after that stage as well. The Court should have weighed the rights of the applicants against the interests of the defendant and should not have left it to them to enforce a decision to the detriment of the respondent. This has meant that compensation agreed between the parties remains unpaid and unenforcable until the respondent decides to do so, and the applicant is deprived of an effective remedy in this respect. Following the decision of the Court of Appeal, the applicant applied to the ECtHR. The respondent then decided to execute the decision of the IPC and the compensation awarded to the applicant immediately. Consequently, the applicant withdrew his case at Strasbourg.[151] However, the problem caused by the decision of the Court of Appeal remains. The applicant only managed to receive the payment as a result of his application to the Strasbourg Court. If he did not have the necessary means, he might still have been waiting for payment. As Hakkı indicates, the decision of the Court provided the defendant with the opportunity to pay applicants when it suits. Hakkı is of the opinion that there is no effective means at applicants' disposal to execute the decisions of the IPC and this is a violation of the rights to a fair trial and to property.

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[150] Article 9 of the Rules of the IPC states that "*For the purpose of the better application of these Rules, the appropriate provision or provisions of the Civil Procedure Rules shall apply, mutatis mutandis, as regards the circumstances not provided for, or not specifically provided for, under these Rules*."

[151] Ulaş Barış, 'Kritik Dava Geri Çekildi, TMK Uçurumun Eşiğinden Döndü' [The Critical Case Withdrawn, The IPC Turned from the Abyss], *Kıbrıs Postası* (5 Ağustos 2016)<http://www.kibrispostasi.com/index.php/cat/35/news/197255/PageName/KIBRIS_HABERLERI> accessed 13 April 2017

In pursuit of this claim he filed ten applications at the ECtHR, seven of which were withdrawn since the Turkish authorities paid a few months after the cases had been communicated to them. According to Hakkı, the payment was made to protect Turkey's reputation in the international community.

Representative X, contemplating on the same problems, affirms that there have been applicants who filed cases at the ECtHR and were paid within three months once the ECtHR cases had been communicated to the respondent.

Lawyer Y notes, for example, that in 2011, payments were made in approximately three or four months, whereas currently this has been taking more than two years.

Achilleas Demetriades also points out:

> *We do not have applications pending for payment now. But some clients come to us from other lawyers and say that they have judgments awaiting payment for 1 year, 18 months etc. Asking us what to do. We used two of these as examples in Andriani Joannou case at the ECtHR as proof of delays. And why there is no interest, why are we, in fact, lending money to [the] IPC when this is our property?*

Yet, in spite of all these issues, not only is prompt payment apparently not happening, but, as already indicated, delay also seems to have led to a sharp decrease in the number of applications to the IPC and to an increase in lack of trust by the applicants to it. Solutions under discussion include a legal requirement upon current owners to contribute to the payment of compensation. If this will be porposed asa solution for lack of resources for payment of compensation, it should be carefully considered. It is not possible to comment on this under current circumstances since there is no concrete proposal before the TRNC Assembly. Providing that the item in the budget for this would be under the control of the IPC itself could be another solution to prevent the arbitrary use of resources instead of payment of compensation.

According to Erkmen, the President of the IPC, finalising more applications under Law No 13/2008 which was touched upon above under sub-section "Process", could be one of the solutions to overcome and minimise problems with regard to

payment of compensation under Law No 67/2005.[152] However, this could only make a minor contribution to solving the problem on account of the scope of the former.

E. Corporate Ownership

Article 6(2) of the IPC law states that the applicant must prove beyond reasonable doubt that, inter alia, the immovable property was registered in their name on 20 July 1974 or that they inherited it legally. This creates difficulties where abandoned property is in corporate ownership because, in *Meleagrou and others v. Turkey* the ECtHR rejected complaints that Article 1 of Protocol No. 1, Article 8 and 14 ECHR had been violated in respect of fourteen plots of land owned by a registered company on the grounds that they were incompatible with the Convention on the *ratione materiae* criterion since the applicants could not claim property rights in land owned by a company, still in existence, in which they were shareholders.[153]

But what if the company which was the owner of a property in 1974 no longer exists and the properties have been transferred to its shareholders? The question of whether a company can have "legal heirs" within the meaning of the Law was raised before the Strasbourg Court on 7 October 2015 in another case.[154] The applicant Pavlos Loizou born in 1961, whose family lived in Kyrenia and owned property there prior to the military intervention in 1974 has been living in Nicosia since. The properties include the family home (plot 146), which was registered in the name of the applicant's mother, and two commercial properties (plots 213 and 233), which were registered in the name of a limited company, Neocles Loizou Successors (NLS), the sole shareholders in which were the applicant's parents. According to NLS's articles of association, the two commercial properties were to be distributed between the applicant and his two brothers if the shareholders so decided. When the applicant's mother died in 1990, his father transferred all three properties to the applicant and his brothers and in 2010, the applicant's brothers transferred their shares to the applicant, making him the sole owner. On 23 September 2011, the

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[152] Deniz Abidin, 'Maddi Tıkanıklığı Aşacak Öneriler' [Suggestions to Overcome Financial Difficulties], *Yeni Bakış*, (10 March 2018) <http://www.yenibakisgazetesi.com/maddi-tikanikligi-asacak-oneriler/29697/> accessed 23 July 2018

[153] *Eleni Meleagrou and others v. Turkey* (n 99) para 12; *Agrotexim and Others v Greece* App No 14807/89 Merits (24 October 1995) para 66. See also *Pavlos Loizou v Turkey* App No 50646/2015 Admissibility (26 October 2017)

[154] *Pavlos Loizou v Turkey* (n 153)

applicant lodged an application with the IPC for all three properties. At a preliminary hearing on 20 November 2014, the Ministry of the Interior informed both the applicant and the Commission that no offer could be made in respect of the family home unless the claims made in respect of the two commercial properties were withdrawn. The applicant withdrew his claims to two commercial properties without prejudice based on his understanding that the relevant legislation, as interpreted by the TRNC High Administrative Court[155] did not allow for an award of compensation unless it could be proven that the claimant was the legal heir of the individual in whose name the immovable property had originally been registered. On 17 April 2015, following an agreement between the parties, the IPC decided that the TRNC authorities should pay £190,000 (approximately €270,000) to the applicant in respect of the family home. Before the ECtHR the applicant claimed that there had been a violation of Article 1 of Protocol No. 1 ECHR with respect to the two commercial properties. Referring to his GC origins, he alleged that there had also been a violation of Article 14 taken in conjunction with this provision. Furthermore, relying on Article 13 ECHR (the right to an effective remedy), he alleged that he had been denied an effective remedy because the relevant law, as interpreted by the TRNC High Administrative Court in *Eleni Meleagrou v the Immovable Property Commission*, does not allow compensation for a property transferred from a company to a natural person. The Court was of the opinion that the mere existence of doubts as to the prospect of success of the applicants' property rights cannot be considered a valid reason for failure to exhaust of domestic remedies. Thus, the case was declared inadmissible.[156]

According to Minhan Sağıroğlu, the lawyer representing the applicant in *Pavlos Loizou v Turkey*, the fact that the government of Cyprus did not intervene in the proceedings at the ECtHR sent a political message to other GCs. In fact, the government of Cyprus had not intervened in either *Joannou v Turkey* or *Pavlos Loizou v Turkey*. On 30 March 2018, I sent a registered letter to the Attorney General's Office of the Republic of Cyprus, requesting an answer to the question of "what the official position of the Government of the RoC is regarding the IPC and the reason(s) behind the decision not to intervene in the proceedings concerning GC

[155] *Eleni Meleagrou Ivy Meleagrou'nun vekili ile KKTC Taşınmaz Mal Komisyonu arasında* [Eleni Meleagrou representative of Ivy Meleagrou v TRNC Immovable Property Commission] YİM 124/2009 D 13/2011 (27 June 2011)
[156] *Pavlos Loizou v Turkey* (n 153) paras 68-74

property cases at the Strasbourg Court in which the subject matter is the Immovable Property Commission". The reply, which was received on 24 April 2018 through e-mail, was as follows:

> *Unfortunately, the specific information you have requested, which first and foremost concerns the Government of the Republic of Cyprus, is not in the public domain. The Attorney General of the Republic is therefore not in a position to comment in his official capacity, on the official position of the Government regarding the IPC, nor on the reasons for which the Republic decided not to intervene in the said procedure.*

For *Pavlos Loizou v Turkey*, Sağıroğlu states:

> *I was of the opinion that there was no need to exhaust the IPC as a domestic remedy in this case. The properties in question belonged to the applicant's family company. My client, in this case, became the owner of the properties following the dissolution of the said company. Law No 67/2005 is silent whether it is possible to claim ownership for such properties. The Law does not allow for an award of compensation, unless it can be proven that the claimant was the legal heir of the "individual" in whose name the immovable property had originally been registered. We had also discussed this with the president and the primeminister of the TRNC and the Deputy Attorney General and they had agreed with us that the Law should be amended in this respect to expand its scope.*

From a practical standpoint, it seems that the applicant's lawyers could have asked for a hearing date if they believed there was room for discussion and scope for counter arguments. However, as revealed by Sağıroğlu, the Deputy Attorney General also considered that the Law should be amended to expand its scope. Furthermore, the TRNC authorities informed the applicant at the preliminary hearing stage that no offer would be made in respect of the family home unless the claims for the two commercial properties were withdrawn. In this regard, such a conditional offer might force the applicant withdraw some of his properties from the application since it had taken more than three years to reach a preliminary hearing. In 2018, Pavlos Loizou submitted a new application to the IPC for two properties transferred to him from his

family company which he had to withdraw as explained above. How the case is going to be finalized by the IPC remains to be seen.

VI. The Politics of the IPC

As addressed in Chapter 1, interviewing representatives of political parties in the north and south of Cyprus was part of this research. Since one of the wider objectives of the thesis is to discover the relationship between the IPC and transitional justice, setting out their views on the negotiations for a solution of the Cyprus problem, the contribution of the IPC and their opinions on the process before it and the property dispute in general adds a valuable dimension.

Eight political parties are currently represented in the Republic of Cyprus House of Representatives in the south. Democratic Rally (DISY) (centre-right) has 18 seats, Progressive Party of Working People (AKEL) (left-wing) has 16 seats, Movement for Social Democracy (EDEK) (centre-left) has 3 seats, Citizens' Alliance (centre-right to centre-left) has 3 seats, and Green Party (centre left) has 2 seats.[157] Their position is addressed below. On the other hand, Democratic Party (DIKO) (centre-right) with 9 seats, National People's Front (ELAM) (far-right) with 2 seats, and Solidarity Movement (centre-right) with 2 seats are amongst political parties in the south which did not participate in the research.[158] DIKO believes that it must be agreed that the RoC will continue to exist after a settlement agreement, intervention rights must be abolished, Turkish troops must leave before a referendum on an agreed solution is held, and they must depart completely before the implementation of any solution.[159] ELAM, having an ultranationalist stance, takes a strict anti-federalist line concerning the Cyprus dispute.[160] On 26 March 2014 for example,

[157] Cyprus Green Party, Interview with Nicos Pavlides, the International Secretary of the Party (Nicosia, 18 January 2018); Movement for Social Democracy (EDEK), Interview with Marinos Sizoupoulos, the Leader of the Party (Nicosia 22 December 2017); The Progressive Party of the Working People (AKEL), Interview with Stephanos Stephanou, the Spokesperson of the Party (Nicosia 22 December 2017); The Democratic Rally (DISY), Written answers to interview questions by Charalambos Stavrides, the Secretary for Political Planning of the Party (20 March 2018); Citizens' Alliance, Interview with Yiorgos Lillikas, the President of the Party (Nicosia 21 June 2018)

[158] Despite contact via e-mail and/or phone, DIKO, ELAM and Solidarity Movement did not give a positive response to my request for interviews.

[159] 'Papadopoulos presents 'new' settlement strategy' *Cyprus Mail* (29 September 2017) <https://cyprus-mail.com/2017/09/29/presidential-candidate-papadopolos-presents-cyprus-settlement-strategy/> accessed 23 December 2018

[160] See for example, 'Far- right leader announces candidacy' *Cyprus Mail* (4 November 2017) <https://cyprus-mail.com/2017/11/04/far-right-leader-announces-candidacy/> accessed 6 March 2019

amongst other violent attacks, ELAM members attempted to interrupt and stop a reunification conference in Limassol, one of the speakers at which was the TC politician Mehmet Ali Talat.[161] Finally, Solidarity Movement, is against a bi-zonal bi-communal federation, emphasizes the need to safeguard the Republic of Cyprus, and supported DIKO leader Nicholas Papadopoulos for the Republic of Cyprus presidential elections in January 2018.[162]

Six parties are currently represented in the TRNC General Assembly in the north and I managed to interview all. National Unity Party (Ulusal Birlik Partisi, UBP) (centre-right) has 21 seats, Republican Turkish Party (Cumhuriyetçi Türk Partisi, CTP) (centre-left) has 12 seats, People's Party (Halkın Partisi, HP) (centre) has 9 seats, Democratic Party (Demokrat Parti, DP) (centre-right) has 3 seats, Communal Democracy Party (Toplumcu Demokrasi Partisi, TDP) (centre-left) has 3 seats, and Rebirth Party (Yeniden Doğuş Partisi, YDP) (centre-right) has 2 seats.[163]

In the north, CTP, the party of the current TRNC Prime Minister Tufan Erhürman, was unwilling to participate in a face-to-face interview but the questions were answered by a member of the Party in writing. Questions on the current situation in Cyprus and further questions to clarify some other issues were left blank. In the south, DISY answered the questions via e-mail, but with clear answers. A face-to-face interview was held with EDEK, and further questions were answered with full cooperation via e-mail. Interviews with the rest of the political parties in the north and south were carried out face-to-face with either the President/Leader of the Party or another person to whom I was referred.

In the beginning, my aim was solely to add flavour to the thesis. Yet, it can be said that interviews with the parties provided me with a sample representing a

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[161] George Psyllides, 'Far right extremists disrupt reunification event' *Cyprus Mail* (26 March 2014) <http://cyprus-mail.com/2014/03/26/far-right-extremists-disrupts-reunification-event/> accessed 23 December 2018

[162] Elias Hazou, 'Solidarity Movement endorses Papadopoulos' *Cyprus Mail* (4 May 2017) <http://cyprus-mail.com/2017/05/04/solidarity-movement-endorses-papadopoulos/> accessed 23 December 2018; see also George Psyllides, 'Theocharous unveils Solidarity platform to 'save Republic'' *Cyprus Mail* (15 January 2016) <https://cyprus-mail.com/2016/01/15/theocharous-unveils-solidarity-platform-to-save-republic/> accessed 6 March 2019

[163] Written answers to interview questions by Emine Çolak, a member of the Republican Turkish Party (CTP) (19 March 2018); National Unity Party (UBP), Interview with Oğuzhan Hasipoğlu, the Foreign Affairs Representative of the Party (Nicosia, 21 February 2018); Democrat Party (DP), Interview with Afet Özcafer, Secretary General to the Party (Nicosia, 5 December 2017); Peoples' Party (HP), Interview with Kudret Özersay, the President of the Party (Nicosia, 15 February 2018); Rebirth Party (YDP), Interview with Erhan Arıklı, the President of the Party (Nicosia, 28 February 2018; Communal Democracy Party (TDP), Interview with Cemal Özyiğit, the President of the Party (Nicosia, 26 February 2018)

significant percentage of the electoral vote. In any case, the comments I gathered should not be taken as representative of the views of the whole population, but as representing the views of some key players and stakeholders who can provide insight into the process.

The main results of the interviews according to themes relevant to "the Cyprus Problem", "the IPC" and "Property Issue as Part of the Cyprus Problem" are addressed below, followed by a brief analysis.

A. The Cyprus Problem

1. Political Parties Represented in the House of Representatives of the Republic of Cyprus[164]

None of the political parties in the RoC is against a solution of the Cyprus problem but they do not agree about what this should entail.

While EDEK and Citizens' Alliance support continuation of the Republic of Cyprus, DISY and AKEL support a comprehensive, lasting and a viable solution, based on a bi-zonal – bi-communal federation, in line with UN Security Council Resolutions, international and EU law. The former desires a truly independent and sovereign federal state, where the latter cannot accept partition as a solution. Stephanou from AKEL notes:

> *Partition will function as a source of problems. The Greek Cypriot displaced will accuse Turkish Cypriot community for occupation and violation of their property rights, and the Turkish Cypriots will accuse Greek Cypriots. Partition will strengthen hatred and will prevent the two communities from building cooperation.*

The Green Party's main concerns are the changing demographic situation in the north, Turkey's influence and the presence of Turkish troops even if a solution agreement is reached by the parties. Addressing the same issue, Stephanou, AKEL Spokesperson, states:

> *If the current situation continues, I am not so sure about the future of the Greek Cypriot community, but I worry more for the future of the Turkish Cypriot*

[164] Interviews with Political Parties (n 157)

community - a small community with the presence of so many settlers from Turkey in north, I don't know how they will survive.

For DISY, the Chapters on "territorial adjustments" and "security and guarantees" are at the heart of the negotiations which will ultimately define whether a solution can in fact be reached. The Party maintains that the failure in Crans Montana, Switzerland in June 2017 was caused by Turkey's insistence on the continuation of the system of "Guarantees" with permanent presence of its troops. Stavrides states:

We consider the current regime of Guarantees and Intervention Rights as anachronistic. Cyprus is, and will continue to be an EU member state post reunification. A viable, functioning, modern state that is a member of the EU is in no need of guarantees from a third country. The best guarantee for security is a well-functioning state.

Lillikas, the President of the Citizens' Alliance, also claims that the new deadlock following the Crans Montana conference is due to Turkish insistence upon the continuation of guaratees and the presence of Turkish troops on the island:

From my point of view, no modern state, especially a member of the EU, can have guarantors and foriegn troops on its land; otherwise it is not a real independent State.

He further adds that the Cyprus problem is a matter of "foreign invasion and occupation", that it is not a problem between the two communities and that no serious incidents between the two communities have been observed for the last 15 years since the opening of check points which allowed cross-border visits by both sides. Indicating the media news regarding the attacks on Turkish Cypriot cars or other incidents in the south, Lillikas notes that these are exaggerated by the Turkish Cypriot media and are no different from any other incident of vandalism in the south.

2. Political Parties Represented in the General Assembly of the TRNC[165]

Both UBP and YPD maintain that an open-ended negotiation process is unacceptable, arguing that, in the absence of a timeframe, a two-state solution would be preferable. YDP further cites the examples of Kosovo, Taiwan and Nakhchivan Autonomous Republic (an exclave of Azerbaijan), suggesting these as alternative models for the TRNC. DP blames GCs for not endorsing the parameters (bi-communal – bi-zonal federation), in fact, agreed by the parties with the 1977-79 High Level Agreements, and is of the opinion that it is difficult to achieve a just solution as long as GCs consider TCs as a "minority". TDP advocates both sides should make compromises to reach a consensus, claiming that the Turkish side showed its readiness to do so in Crans Montana. HP, on the other hand, claims that the problem is the lack of a common understanding of "a bi-zonal – bi-communal federal state based on political equality of both sides". In the absence of a solution on the basis of UN parameters, Özersay, the President of HP, suggests a different model which would leave room for more concessions to be made by both sides. For example, according to him, TCs could compromise more with respect to territorial adjustments, reinstatement of properties, security and guarantees than those necessary to achieve a federal solution. In other words, he supports a model based on the "cooperation" of two states, instead of a model based on "sharing" in a federation.

Unfortunately, CTP did not answer the question about how the Party views the current situation and the Cyprus problem for this research. Yet the Party is known to back a federal solution.

B. The IPC

1. Political Parties Represented in the House of Representatives of the Republic of Cyprus[166]

None of the interview participants in the RoC recognise the legitimacy of the IPC. While some parties have a policy of discouraging people from applying to it,[167]

[165] Interviews with Political Parties (n 163)
[166] Interviews with Political Parties (n 157)
[167] Interviews with Greens, DISY and EDEK (n 157)

others just inform them of its character and consider that people are free to resort to it or not.[168]

Satvrides, DISY Secretary for Political Planing, particularly notes:

> *There is no logic in having the victim applying to the offender for justice. We do know, that, the IPC claims that it examines impartially the applications of Greek Cypriot refugees for restitution, compensation or exchange of their property in the occupied areas, but in reality, the procedure is very slow, it almost never includes restitution as a measure of therapy and calculates the value of the Greek Cypriot properties in humiliatingly low prices. This is the main reason why applications from Greek Cypriots to the IPC have decreased dramatically the last few years.*

This extract summarizes the issues addressed by other political parties to a great extent. Some also argue that applicants should have had the right to claim for loss of use only, instead of compensation for the value of their property, which, in essence leads to relinquishing their rights over them.[169] However, accepting this would meant that applicants can come to the IPC periodically and indefinitely to claim loss of use until a political solution to the Cyprus problem is achieved, which is not in line with the essence of the system established by the IPC.[170] They also observe that a vast majority of applicants do not want to be dispossessed of their land,[171] yet they resort to the IPC for economic reasons.[172] For example, Pavlides, the International Secretary of the Green Party, notes that they do not denounce people as "traitors" for applying to the IPC, but consider them as "people in dire economic necessity". Or, for example, Stephanou, the Spokesperson of AKEL, states that his party does not believe that the IPC is effective and that the property issue can only be solved with the solution of the Cyprus problem itself. They neither consider people resorting there as "traitors", nor publish "name and shame lists" in the press.

None of the parties is of the opinion that the IPC can have a role in building trust and understanding between the two major communities in Cyprus. Lillikas observes that the IPC cannot be deemed as "acknowledgment" of the suffering of GC

[168] Interviews with AKEL and Citizens' Alliance (n 157)
[169] Interviews with Green Party and Citizens' Alliance (n 157)
[170] This was also addressed by the ECtHR in *Demopoulos and others* as noted in Chapter 3.
[171] Interviews with Green Party and Citizens Alliance (n 157)
[172] Interviews with Green Party and AKEL (n 157)

displaced persons. He states that Turkey had to establish the IPC, otherwise "the ECtHR would continue to take decisions against [it]".

DISY also claims that the IPC enhances hostile feelings between the two communities for imposing humiliatingly low level of compensation on displaced persons facing financial difficulties, and for "legitimizing the illegal occupation of their properties". Stavrides, the Secretary for Political Planning of DISY, also states that this has resulted in a dramatic drop in the number of applications to the IPC by GCs during the last few years. He suggests that the property issue can only be dealt with in the context of a comprehensive settlement of the Cyprus Problem.

EDEK also regards the IPC as an outcome of "the Turkish invasion and the continued occupation", noting that it would be "a paradox" if it had a role in acknowledging the suffering of victims of displacement. Indicating that the Republic of Cyprus governments have not sufficiently supported displaced GCs,[173] the party backs the establishment of a "support fund" to provide compensation for "loss of use, harassment or exploitation of land", which would eventually discourage anyone from resorting to "the illegal committee" to "sell" their property.

Lillikas, the President of Citizens' Alliance, observes that governments did the most they could for the displaced, yet notes that mistakes were made at later stages when a special tax was introduced as a contribution, but used for other purposes. Lillikas adds that if this had been managed wisely, the position of the displaced would have been much better today.

AKEL is of the opinion that the RoC governments have sufficiently supported the displaced, yet the party notes that there is always room for improvement. DISY also shares the same view while indicating that:

> *The Turkish Invasion displaced almost 200.000 Greek Cypriots from their homes and properties and resulted in the illegal occupation of 37% of the island, 60% of the coast line and more than 50% of 1974's natural resources of the island (water supply, farm land, animal stock etc.). Therefore it was - and still is - impossible for the Republic of Cyprus to compensate refugees for their suffering and loss of property. However, it is true that all governments from 1974 could do more to ease the suffering of refugees and help them to re-enter in the economy. Having said that, it is crucial to underline that only through the*

[173] Cyprus Green Party shares the same view (n 157)

solution of the Cyprus Problem and the withdrawal of Turkish troops from the island, we can hope to deal with the injustices and problems that the division brought to refugees and persons that lost their properties, Greek Cypriots and Turkish Cypriots.

2. Political Parties Represented in the General Assembly of the TRNC[174]

All interviewed parties addressed the financial difficulties arising from payment of compensation and lengthy delays before the IPC. CTP, HP, DP and TDP which formed the coalition government in February 2018 included in its program that:

[…]the necessary arrangements should immediately be made and the necessary international relations will be re-established for the immovable property commission to work as an effective domestic mechanism in line with the criteria established by the ECtHR within the framework of the ECHR, the work for the establishment of a predictable system of immovable properties will be among our priorities. Measures will be taken to support the immovable property commission with a new and reasonable financing model. Necessary amendments will be made to enable the Commission to work effectively and rapidly.

Despite the framed intention and the desire for improved effectiveness of the IPC, the interviews revealed that the coalition parties neither have concrete proposals nor have any steps been taken so far, but only have abstract ideas for the IPC's improvement.

For example, CTP acknowledges the need to find local sources for funding awards by the IPC, so far provided by the Republic of Turkey, but the party did not want to clarify this issue.[175]

HP, on the other hand, has further ideas about the issue. Özersay is of the opinion that alternative methods should be introduced if partition remains. For example, instead of a full process before the IPC, registration of private deals and/or amicable settlement agreements between individuals could be a more flexible process.[176] Another suggestion is to broaden the scope of Law No 13/2008[177] to

[174] Interviews with Political Parties (n 163)
[175] This was one of the issues which the Party did not want to clarify further.
[176] According to Özersay, the IPC's role would be to register settlements between the individuals themselves.
[177] This Law was addressed previously in this Chapter.

include persons holding title according to TRNC legislation as applicants before the IPC enabling them to reach settlements with GC property owners to diminish the financial burden on the State in payment of compensation.[178] For problems with respect to the "exchange of properties" addressed in the relevant sub-section above, HP notes that the Committee of Ministers and the ECtHR could have a role in reinforcing and making this remedy fairer in practice.

All respondents considered that a special form of tax would burden current users of GC properties, but nevertheless stated that this kind of a legal arrangement needs careful consideration. It is said that this could contribute to awards by the IPC. Except for YDP, the parties neither addressed what the percentage of tax should be nor any other details.

Nevertheless, UBP and HP particularly noted that such a tax payment should only take place at the time of sale of the relevant property by its current user, instead of, as some propose, the time of payment of compensation awarded by the IPC. UBP also suggested that this tax could be imposed on condition that there had been an increase in the value of the relevant property. TDP noted that the characteristics of current users as tax payers are also important; for example, whether they hold GC property titles "in exchange of their property in the south" or in another capacity. DP added that this kind of tax could contribute to the process but would not suffice to overcome the present challenges faced by the IPC. YDP claims that the IPC's problems are, to a great extent, the result of the unwillingness of TRNC governments to establish a concrete position with respect to any improvements such as the proposal by Turkey to introduce a special form of tax as a burden on current users of GC properties as noted above. Arıklı, the President of YDP, also explains the logic of this proposal: At the time it was proposed, Turkey was of the opinion that the relevant properties become "undisputed" through payment of compensation to GC owners, causing a considerable increase in their value. The proposed contribution ratio was 50% of the amount of compensation at the time of *payment* of the award by the IPC, while the TRNC government managed to reduce this to 20%. Arıklı states that the TRNC governments have not introduced necessary legal provisions and thus Turkey cut its contribution to the IPC awards in this respect. Arıklı stresses that his Party fully supports Turkey's position and proposals. According to him, the most

[178] The content of this Law was also addressed above in this Chapter.

affected users of GC properties are those who came from Turkey after 1974-5 who insist that an option to contribute to compensation to GCs should definitely be provided for them, stating that their rights as being referred to as "settlers" have also been subject to negotiation under UN auspices.

Respondents' views vary when it comes to the impact of the IPC on the relationship between the communities in Cyprus.

CTP states that the IPC can have a positive impact on the process of reconciliation, helping on one hand for the TCs to understand that they have to respect rights of persons who lost their properties while on the other hand, for the GCs to appreciate that there are other deserving parties, and to consider compensation as an alternative remedy. Both CTP and HP note that the IPC can also be considered as a mechanism to acknowledge the sufferings of the GCs. While UBP implies that there is nothing wrong to be acknowledged, TDP considers that it is not an acknowledgement of a wrong, but the backdrop for acknowledging a bi-zonal – bi-communal solution. Referring to the years between 1963 and 1974 in which TCs lived in ghettos and tents, YDP blames GCs for this, concluding that they should be responsible for payment of war damages, adding also that they do not deny GCs' property rights. Indicating that they respect the individual right to property, DP notes that, the IPC being a one-sided mechanism, it can serve as a tool neither for securing nor acknowledging property rights of TCs.

C. Property Issue as Part of the Cyprus Problem

1. Political Parties in the House of Representatives of the Republic of Cyprus[179]

It is widely assumed by the political parties in the RoC that "restitution", "compensation", "exchange of properties", or a combination of these three will be available both for the GCs and TCs following resolution of the Cyprus problem. DISY, Citizens' Alliance, Green Party and EDEK particularly state that legal owners should have the first right of say over their properties.

Accepting that exceptions will apply to this general rule, DISY notes that these must be agreed upon specific criteria. Claiming that Turkey and the Turkish

[179] Interviews with Political Parties (n 157)

Cypriot leadership's aim is to create "a pure ethnic TC State in the occupied areas, where the vast majority of property owners are either TCs or Turkish settlers", Stavrides adds:

> *This is why we cannot accept the logic of Turkey that in a bizonal, bicommunal federation, we have two geographically ethnic-clear entities that will form a united Cyprus. It is obvious that the financing of the property issue in a solution will be complex and it has already been agreed that a Property Council will be formed after a solution to act as a judicial body for the property issues. The IMF and the World Bank have already examined the economic aspects of a solution and the function of the Property Council and provided the two leaders with very helpful suggestions on how the property issue should be dealt with.*

According to the Green Party, territorial adjustment areas to be agreed within the framework of a settlement agreement are of particular importance and should cover population centres to allow a significant number of GCs to have their properties back. They insist that, unless this is the case, the property issue will remain pending for a significant period of time. However, Citizens'Alliance, strongly opposing to it, contends that a bi-zonal – bi-communal federation is the legalisation of partition. In this respect, party President Lillikas states:

> *[…] with this model, the EU citizens will be able to live in Kyrenia or in Paphos for example, they will have more rights and freedoms than a Cypriot, a Cypriot will not be able to live in Paphos or Kyrenia, and for me this is not acceptable.*

For AKEL, it is important that "ownership" is recognised but, addressing the current users of properties, the party states that new circumstances arising as a result of the passage of time cannot be ignored and that improvements over the properties should be taken into account. They also argue that the emotional element cannot be disregarded, for example, an attachment of a GC to the house in which he/she was born. In other words, Stephanou rightly appreciates that each community should get into the shoes of the other.

EDEK and Citizens' Alliance note that the Annan Plan included unacceptable property provisions. On the other hand, for AKEL security and guarantees were of greater importance than the Plan's property scheme. In this respect, AKEL proposed

to postpone the referendum for amendments in the Plan with respect to "security" to convince the GC community to vote "yes".

DISY, then led by Nicos Anastasiades, backed the Annan Plan at that time. Stavrides states that the Plan's property scheme limited the right of legal owners to reclaim their property, gave priority to current owners, introduced long-term government bonds (compensation bonds) which needed 25 years to mature, and consequently did not address expectations of the GCs to reclaim their property or to be compensated in a reasonable period of time.

2. Political Parties Represented in the General Assembly of the TRNC[180]

TDP and CTP supported the Annan Plan V and thus its property scheme in the 2004 referendum. TDP further emphasizes the importance of the criteria to be introduced by a settlement agreement according to which property disputes would be solved, and CTP emphasizes the importance of negotiating a scheme which would be acceptable and feasible for both sides.

YDP insists that the Turkish side should take "advantage" of the decision in *Demopoulos and others*, suggesting that international law set the ground rules for the solution of the property issue through "global exchange of properties" in the first place but that the Annan Plan would have complicated the property issue. DP also supports "global exchange" according to an evaluation of properties both in the north and the south to establish foundations for the solution of the property issue with a settlement agreement where the administration of the two sides would be responsible to recompense their respective communities. UBP states that while this was not the case for the TCs in the Annan Plan, the criteria under which the property issue would be resolved should be very clear and predictable.

Noting that 14 years have passed since the Annan Plan V, HP advocates increasing the number and/or percentages of properties to be settled by "compensation", instead of "restitution", compared to the Plan. The Party considers that complications brought by the passage of time cannot be ignored and contends that this would be a "cost" for the GCs rejecting the Annan Plan V in 2004.

[180] Interviews with Political Parties (n 163)

D. Remarks

None of the parties are against a solution of the Cyprus problem, but when the details and motivations are examined, it is seen that their understanding of what this might involve differ to a great extent.

It can be observed that political parties in the south mostly refer to Turkey as their main concern and consider it as the main party to the problem. As a left-wing party, AKEL is the most moderate one. Yet their understanding of bizonality also differs from those in the north, and the Party is keen on the consistency of a solution agreement with the EU *acquis*.

When it comes to the IPC, political parties in the south do not recognise it as a remedy and, despite the fact that it was set up in line with the standards envisaged by the ECtHR, question its legitimacy and/or legality. Furthermore, they also do not want displaced persons to resort to the IPC while some even have a policy of discouraging them from doing so. Given these circumstances, it would be utopian to expect that the IPC could have been seen as a legitimate remedy by the majority of the GCs in the south.

It seems the political parties in the north do not have concrete plans nor have they taken any steps for the improvement of the IPC so far. As long as this is the case, frustration faced by the applicants before the IPC is unlikely to be overcome. Furthermore, unless a concrete position is defined, the current situation could be used as a means of propaganda in the south against the IPC, which could further erode trust and the relationship between the communities.

VII. Conclusion

The IPC Law was drawn up in line with the findings of the ECtHR and it is unlikely it would ever have been established had it not been for a series of applications from GCs claiming violation of the ECHR right to peaceful enjoyment of possessions relating to property abandoned in the north. Through these cases, its character was effectively negotiated by the authorities of the TRNC and Turkey with Strasbourg, particularly the replacement of a previous version (Law No 49/2003) with a more Convention-compliant alternative. Despite this, political parties in the south do not

recognise the IPC as a remedy and question its legitimacy and/or legality. Given that they also would prefer the displaced persons not to resort to the IPC, it seems unlikely that the IPC could have been regarded as a legitimate remedy by the majority of the GCs in the south.

Although the Law offers three remedies for applicants, the most favoured and most straightforward is compensation. Judging the IPC, in the first instance, according to its own rationale and mandate, it would be difficult not to conclude that it has been, at the very least, a modest success. A total of £300,090,876 has been awarded by January 2019. Exchange and restitution have however been difficult although alleged unfairness regarding the amounts of compensation awarded without interest remains as revealed by the interviews.

There have also been other problems. While the ECtHR has found IPC proceedings to be fair, they have nevertheless been lengthy, and there have been problems with their transparency and with the execution of judgments awarding compensation. While the IPC Law could be amended to address and clarify the issue of corporate ownership, this is not so easy for mortgages and other incumbrances. Lengthy delays in execution of judgments awarding compensation show the importance of early planning of financial resources.

Some suggestions for possible improvements made in relevant sub-sections include classification of applications claiming restitution and exchange, inclusion of admissibility procedures to clarify *locus standi* of applicants in particular, and introducing a system for the execution of decisions under the supervision and contol of the IPC. Despite political difficulties, an assessment should be made to award and/or implement "restitution following the settlement of the Cyprus problem" as a remedy for properties in the fenced-off Varsoha. This could at least be considered as a moral remedy in the absence of the resolution of the Cyprus problem. Demilitarisation of the area as envisaged by the UN Resolutions could prove a more sustainable solution. Recent initiatives by the TRNC and Turkey, to open up the fenced-off Varosha, neglect the views of other relevant stakeholders to open the area under the administration of the TRNC. Social transformation is unlikely to emerge through such closed technocratic routes.[181] Various institutional tracks could work more productively via communication with victims and affected communities.[182]

[181] Rebekka Friedman, 'The Pitfalls and Politics of Holistic Justice' (2015) 6 (2) Global Policy 141
[182] See ibid

The IPC could exercise the powers envisaged in its Law on its own initiative, hold more hearings even in the absence of two foreign members, and coordinate more meetings for friendly settlement. Above all, it is open to question whether adversarial proceedings with the inclusion of a defendant party before the IPC is an appropriate process. A structure which could reflect the distinct functions consisting of divisions responsible for process of claims, examination of issues and execution could be more productive and could accelerate resolution of claims.

The patchwork and piecemeal nature of the solutions provided by the IPC might undermine the confidence and trust of affected communities unless the process is improved.[183] In the final analysis, improvement of the process at all stages and minimising alleged arbitrariness by the applicants' lawyers/representatives regarding the process are important for the IPC's reputation as well as building trust towards it, and could contribute to improving the relationship between the communities. However, given the fact that political parties in the north neither have concrete plans nor have they taken any steps for the improvement of the IPC so far, the future seems bleak.

[183] See Amnesty International, 'Northern Ireland: Time to Deal with the Past' (EUR 45/004/2013 September 2013)

Chapter 6 Conclusion

I. Transitional Justice and Cyprus

It was addressed briefly in Chapter 1 and further in Chapter 2 that the history of Cyprus has been marked by the interethnic struggle between GC and TC communities. The underlying historical, economic, social and cultural reasons for the communal antagonism on the island have made achieving a political solution difficult, if not impossible. The history of negotiations for a solution under the UN "peace process" and factors having an impact on the quest for a solution were addressed in Chapter 3. Although UN efforts have continued for more than 40 years, as was observed, the issues addressed have mainly concerned structural and institutional dimensions of a future federal state solely in a political and legalistic context. Furthermore, seeking to further its own needs and aspirations, each side expected the other to make compromises and concessions unilaterally; i.e. there has been no concern for transformation of relationships between the communities. As the interviews with political parties revealed, while none is against a solution of the Cyprus problem, their understandings of what it means differ radically. Furthermore, political parties in the south mostly regard Turkey as the main element in the problem.

As some scholars maintain, as a result of the absence of an armed conflict Cyprus is a "comfortable conflict".[1] Although this is unsustainable in the long term and despite the fact that the latest surveys show that the majority of the populations of both sides support a solution, it seems that leaving comfort zones has not been easy for many. It is not clear whether the people of Cyprus appreciate that federalism is based on a culture of power-sharing and equality, an understanding which could be improved through education and awareness raising. At the same time, prevailing ethno-centric nationalisms and manipulation by politicians have had the greatest negative impact on people's perceptions of solutions, a factor generating communal fears causing an impasse regarding, in particular, the issue of security. This has not allowed policy options pursued so far to be replaced by more constructive ones. On the other hand, these approaches cannot be deemed the only hindrance to the realisation of a united Cyprus. Arguably, the biggest obstacle is the fact that the

[1] Constantinos Adamides and Constantinos M Constantinou, 'Comfortable Conflict and (Il)liberal Peace in Cyprus', in Oliver P Richmond and Audra Mitchell (eds) *Hybrid Forms of Peace: From Everyday Agency to Post-Liberalism* (Palgrave Macmillan 2012) 5

concept of "other side" has been "institutionalized as a political strategy".[2] Yakinthou states that, there is an "infrastructure that perpetuates a culture of mistrust" in Cyprus.[3] Furthermore, as Yakinthou observes, there is resentment between the communities on the island with respect to the past; the GCs' is centred on TC enjoyment of GC property, while TCs' is centred on the view that GCs silenced them before 1974.[4] Furthermore, the period between 1963 and 1974 is referred to and remembered by many TCs as a siege, while it is referred to as "the troubles" by GCs.[5] July and August 1974 are remembered by GCs as a period of destruction and invasion.[6] While referring to those who were killed, threatened or suffered during the period between the 15 July Greek Coup and the 20 July 1974 Turkish intervention, the TC narrative views the latter as a victory and a sacrifice required for their collective freedom.[7] There is a lost balance in Cyprus in the sense that one side took possession of the RoC and prospered, while the other possessed an unreasonable percentage of territory/property compared to its population yet sank into economic stagnation. A core issue concerns the type of justice which can only be achieved once this lost balance is restored, at least, to a reasonable extent "without creating disproportionate new wrongs"[8]. Territory and property have been living symbols for the GCs since the partition of the island, and the presence of Turkey continues to impact the current rhetoric. Reconciliation is therefore important as a prerequisite to establish a regime supporting human rights and to counteract mutually antagonistic collective blame. Pragmatic compromises in the name of stability are also essential to establish a viable human rights regime in Cyprus.[9] All these facts complicate the difficulties faced by those trying to negotiate a settlement. However, achieving positive peace in Cyprus is not only a matter of negotiating a solution but also of radically reorienting the present.[10]

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[2] Rebecca Bryant, 'Partitions of Memory: Wounds and Witnessing in Cyprus', (2012) 54(2) Comp Stud Soc'y&Hist 332, 342

[3] Chrystalla Yakinthou 'Transitional Justice in Cyprus: Challenges and Opportunities' edited by Ahmet Sözen & Jared L. Ordway (Security Dialogue Project, Background Paper, Berghoff Foundation, June 2017) 10

[4] Ibid 9

[5] Ibid 8-9

[6] Ibid

[7] Ibid 9

[8] This was also a statement by the Court in *Demopoulos and others* as examined in Chapter 2

[9] See also Anne B Leebaw, 'The Irreconcilable Goals of Transitional Justice' (2008) 30 Hum Rts Q 95, 105

[10] Bryant 'Partitions of Memory' (n 2) 357 - 358

With all this in mind, it was indicated in Chapter 1 that the starting point of this research has been the work of the ICTJ emphasising the importance of a cross-communal discussion in Cypriot public opinion about coming to terms with the past in Cyprus.[11] The report of this project pointed at four particular areas of TJ deemed relevant to Cyprus which came to fore over the course of their work - truth-seeking initiatives, criminal prosecutions, memorialisation efforts, and documentation projects.[12]

In general, TJ provides a framework for dealing with the past in transitions from armed conflict and/or authoritarianism. It attempts to advance more peaceful futures through institutional reform/guarantees of non-recurrence, reparations, truth and justice. While the limitations of TJ were addressed in Chapter 2, it was observed that the field has expanded to include a more transformative approach emphasizing a longer term vision. This was also essential as a result of the kind of transition in which Cyprus finds itself and together with TJ, TTJ was chosen as a framework for this thesis. At this point, negative peace where the conditions which caused violent conflict remain, and a positive peace which eradicates the causes of violence, and focuses on broad social, and the demands of transformative justice were also distinguished,[13] because, there is still no positive peace, but rather an "absence of war" in which there is also injustice and personal discord and dissatisfaction; "negative peace, "weak or fragile peace".[14]

The members of both communities in Cyprus do not feel they belong to a common State, and their mutual distrust and suspicion prevents each from seeing the other in a positive and constructive spirit. The collapse of the RoC is an example of how inadequately constructed relationships tend to provoke repeated crises. It is evident that it will take a long time for the communities in Cyprus to restore their relationships while addressing the root causes of the conflict. While TJ could provide insights and tools, TTJ as the final stop on a TJ continuum should be considered as another useful framework blending the restorative and reparative justice approaches. The institutional reform/GNR components of TJ have been the main linking points

[11] Ibid 3
[12] See Umut Bozkurt and Chrystalla Yakinthou, 'Legacies of Violence and Overcoming Conflict in Cyprus, The Transitional Justice Landscape' (2/12 Prio Cyprus Center)
[13] See Johan Galtung, 'Violence, peace, and peace research' (1969) 6 (3) Journal of Peace Research 167
[14] Ibid; Charles Webel, 'Toward a philosophy and metapsychology of peace' in Charles Webel and Johan Galtung (eds) *Handbook of Peace and Conflict Studies* (Routledge 2007) 11

between the two frameworks. Cyprus is not in transition from authoritarianism to democracy. As considered in Chapter 1 there are separately governed States on both sides of the island and partition only brought a temporary end to active violence.[15] Further transitions are also possible but not imminent. The problem and the complexity is that TJ has not been accepted by both sides as part of an official policy in Cyprus. The establishment of a Reconciliation Comission as proposed by the Annan Plan did not enter into force in 2004 and it had not been an object of public discussion at that time. Instead of expecting a comprehensive settlement agreement for the solution of the Cyprus problem to automatically overcome the distance between the communities, the latter must be dealt with separately. As Bryant puts it, the ceasefireline dividing the island operates as Lloyd's "unclosed gash," "a wound on the body politic that must be healed".[16] This "wound" or "gash" represents past suffering and is a reminder of the possibility of suffering in the future. Bryant notes that the line also signals the impossibility of "putting the past behind us."[17] For this, TJ should be part of a wider debate in Cyprus as well as its clear inclusion within the process of negotiations under the UN mediation efforts; i.e. the "peace process" as the UN itself calls it.

On the other hand, on both sides of the island, the authorities attempt to deal with the effects of partitition, such as the property rights of each community which can be considered as in transition. In current circumstances, Cyprus "is not a post-conflict society".[18] It is difficult to situate the case of Cyprus in any of the types of transition considered in Chapter 2. At the same time, the fact that it is unknown what Cyprus is transitioning to does not exclude TJ and TTJ as frameworks for analysis. In fact, the presence of negative peace make them even more important for Cyprus. Bozkurt and Yakinthou argue that, on a deeper level, if "one of the aims of transitional justice is the restoration of trust between citizens and institutions, there should be at the very least some internal agreement on the legitimacy of those institutions". As a society dealing with the legacy of conflict-related issues, which, at the same time being held hostage by an ongoing peace process, Cyprus presents a

[15] Use of the concept "formaly democratic" was explained in Chapter 1, "Background and Research Question"
[16] Bryant, 'Partitions of Memory' (n 2) 339
[17] Ibid
[18] Bozkurt and Yakinthou (n 12) 6

rather complex case for TJ.[19] Since negotiations to solve the problem are ongoing, disputes and legal claims particularly over property and uncovering the remains of the missing have "led to the realization that everyone has his or her own Cyprus problem, and that for many people solving their own Cyprus problems is more than enough."[20] Alternative truth-seeking approaches have also been in progress, documentation efforts have been increasing, and some form of compensation and restitution have been offered to GC displaced persons.[21] Though there is no agreed solution to the overall problem, there have been attempts to seek redress for human rights violations. However, these processes sit alongside, and often at odds with the peace process.[22] It is this context and background which makes the IPC such a unique institution, worthy of the attention it receives in this thesis.

II. Transitional Justice and the IPC

This project examines the IPC through a TJ lens since, as previously noted, it provides an opportunity to those GCs who wants to pursue their rights over their properties in the north rather than awaiting a political solution. In other words, it gives rise to a form of transition of property rights with respect to GCs until the solution of the Cyprus problem. However, whether it is an effective TJ mechanism which could help and provide for GNR/institutional reform is another matter. Furthermore, since it aims to remedy property rights of displaced GCs, the attempt was to discover the IPC's potential, if at all, for transforming the relationship between the communities in Cyprus.

The difficulty entailed here has been the fact that TJ has not been part of an official policy in Cyprus, but, as the literature relevant to Cyprus indicates, more and more people from civil society, academia, the arts community, and within political circles contemptale thow to overcome the burden of the past in order to create a more peaceful future. However, as the interviews with political party representatives showed, we do not know whether a substantial will exists to include TJ as an official policy in Cyprus.

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[19] Ibid 7
[20] Mete Hatay and Rebecca Bryant, 'Negotiating the Cyprus Problem(s)' (Tesev Publications 2011) 22
[21] See Bozkurt and Yakinthou (n 12)
[22] This was elaborated in Chapters 2 and 3

How the IPC was set up and how it operates were addressed to provide whether any indicators of TJ and/or TTJ were and are involved. The IPC Law was drawn up in line with the findings of the ECtHR and it is unlikely it would ever have been established had it not been for a series of applications from GCs claiming violation of the ECHR right to peaceful enjoyment of possessions relating to property abandoned in the north. Through these cases, its character was effectively negotiated with Strasbourg by the authorities of the TRNC and Turkey, particularly the replacement of a previous version (Law No 49/2003) with a more Convention-compliant alternative. Because it was established under pressure from the ECtHR, it is not the result of an inclusive process bypassing an essential indicator – participation - in TJ mehanisms such as those in Colombia and Tunisia. On the other hand, despite the ECtHR's involvement in the process (where its decisions were deemed as victory for GCs until the *Xenides-Arestis* and *Demopolous* cases), political parties in the south do not recognise the IPC as a remedy and question its legitimacy and/or legality. Given that they would prefer displaced persons not to resort to the IPC, it seems unlikely that the IPC is regarded as a legitimate remedy by the majority of the GCs in the south.

Among the three remedies the IPC Law provides for applicants, compensation has been the most favoured and most straightforward. Exchange and restitution have however been difficult although, as revealed by the interviews, alleged unfairness regarding the amounts of compensation awarded without interest remains.

There have also been other problems. IPC proceedings have been lengthy and there have been issues concerning their transparency and the execution of judgments awarding compensation. Some suggestions for possible improvements, made in relevant sub-sections of Chapter 5, might contribute to finding solutions.

From a material point of view, recompense for abandoned property is merely a matter of money. However, individuals and families may also have strong sentimental attachments specific places. Moreover, the identity of traditional communities, as in Cyprus, is often deeply connected with territory.[23] A process such as that offered by the IPC is incapable of addressing these issues which many transitional socities face. The patchwork and piecemeal nature of the solutions

[23] See Charis Psaltis, Huseyin Cakal, Neophytos Loizides and Işık K Bonnenfant, 'Internally Displaced Persons and the Cyprus Peace Process' (2020) 4 (1) International Political Science Review 138, 145

provided by the IPC could also shed light upon the weaknesses of such approaches if they are inadequately conceived and constructed. This might undermine the confidence and trust of affected communities in the ability of such institutions to deliver justice.[24] In the final analysis, improvement of the process at all stages and minimising alleged arbitrariness are important for building trust towards it, and could contribute to improving the relationship between the communities. However, given the fact that political parties in the north neither have concrete plans, nor have they taken any steps for the improvement of the IPC so far, the future seems bleak. This is also where the distinction between "transition" and "transformation" becomes important. The former does not necessarily reach "deep into the soil of the new society where the commitment to democratic values actually takes root".[25] On the other hand, transformation "implies long-term, sustainable processes" to establish conditions to provide for a longer term vision rather than an "interim process that links the past and the future".[26] In the case of Cyprus, the destination of the transition will depend on whether partition is permanent or temporary. But, as long as it remains, it is important whether institutions, processes and developments affect it positively or negatively. This is why TTJ is also important both for the IPC and Cyprus as a whole.

In Chapter 1 of the thesis, it was stated that initiatives like the CMP and education initiatives continue regardless of the peace process. Thus, TJ issues are not far from what is already being done in Cyprus as discussed by Bozkurt and Yakinhtou.[27] It was also noted that a much closer analysis of what is needed by those directly affected by the conflict possibly indicated at least partially by the IPC, is required. Since a core issue with respect to the IPC concerns a type of justice and the concept of reparations (e.g. remedying the loss of property) which could contribute to institutional reform/GNR, both of which figure in TJ undertakings, the IPC could have provided an opportunity to create space for justice and peace. However, following a detailed examination of the IPC, its work, lawyers/applicants' perceptions towards it and the political parties' positions, it was found that the task

[24] See Amnesty International, 'Northern Ireland: Time to Deal with the Past' (EUR 45/004/2013 September 2013)
[25] Erin Daly, 'Transformative Justice: Charting a Path to Reconciliation' (2001-2002) 12 Int.'l Legal Persp 73, 74
[26] Lambourne, 'Transitional Justice and Peacebuilding after Mass Violence' (n 1) 30, 45; see also Lauren Marie Balasco 'Locating Transformative Justice: Prism or Schism in Transitional Justice?' Review Essay (2018) 12 (ICTJ) 368, 371
[27] Bozkurt and Yakinthou (n 12)

would not be easy and may even be impossible. With regard to institutional reform/GNR, an institution's role should be to contribute to societal transformation by creating more responsive and democratic state structures that are able to address violence and inequalities. The reparations component has also been noted as important here since the IPC was established to be "an effective remedy" for GC property rights. Reparations encompass various measures to repair the damage suffered by victims of human rights violations; i.e. restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. They can further support victims' dignity.[28] It was observed that the IPC Law lacks these kind of various measures having only compensation, restitution and exchange at hand. The UN Special Rapporteur Pablo De Greiff's report in 2014 also pays particular attention to participation of victims in defining, designing, implementing and monitoring reparations processes.[29] This has also been absent from the IPC which makes it difficult for reparations to have transformative potential.[30] Furthermore, a process such as that of the IPC prevents it from being seen as a public space in which the groundwork for reconciliation is laid.[31]

Civil society and governments provide important sites for reconciliation. In other words, the actual work cannot be done by transitional institutions themselves which, at best, can merely start the process.[32] Another problematic issue has been the initiative by Turkey and the TRNC with respect to the fenced-off zone in Varosha which lacks an inclusive process, not only excluding former legal inhabitants but also TC academics and researchers, NGOs and political parties which have different views on the matter. This illustrates how piecemeal approaches could have a negative impact on the perceptions of those excluded from processes and prevents reconciliation processes from taking root. *Gacaca* courts of Rwanda provide an example of a first step towards reconciliation, although they could not provide trust

[28] Lars Waldorf, 'Anticipating the past: Transitional justice and socio-economic wrongs' (2012) 21(2) Social & Legal Studies 171, 177
[29] 'Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence' (14 October 2014) A/69/518
[30] Paul Gready and Robins S, 'From Transitional to Transformative Justice: A New Agenda for Practice' (2014) 8 IJTJ 339, 347
[31] Ibid
[32] Daly (n 25) 91 (The author refers to Desmond Tutu's statement in his forward to the Truth and Rreconciliation Commission Report)

between many perpetrators and survivors.[33] Furthermore, the promises of reparation and compensation were not fulfilled either in Rwanda or in South Africa.[34] On the other hand, a longitudinal study showed that Rwanda's *gacaca* courts had positive intergroup effects.[35] This could also be the case for the IPC if the process is improved. In this regard, as noted in Chapter 2, the way the institutions are created, their terms, their structural features and their transparency are all important aspects[36] as in the inclusion of a variety of voices reflecting an inclusive process.[37] If excluding a part of the population is repeated, the political justice necessary for successful implementation of measures is unlikely to be achieved. This was relevant in Rwanda where a perception of victor's justice caused displeasure among the Hutu majority, while the government was seen as being controlled by the Tutsi minority.[38] Furthermore, it is essential to guarantee that the structural features of an institution reflect the values of the new regime, the new government, and society as a whole.[39] Furthermore, for a successful mechanism, these values should be digested not only in theory, but also in practice. In this vein, the institution's authority and/or its mandate are crucial. It should of course have sufficient resources and/or budget to do its work appropriately and effectively.[40] It is a fact, even for ordinary times, that a mechanism insufficiently empowered cannot work effectively. In transitional times, an insufficient mechanism, i.e. one favouring the status quo, would even be more prejudiced for the purposes of transformative justice since it would harm the entire process. In transitional societies if the state's legitimacy is too weak, the legitimacy of the institution will be affected accordingly with potentially widespread negative

[33] Human Rights Watch, 'Justice Compromised: The Legacy of Rwanda's Community-Based Gacaca Courts' (31 May 2011); see also Barbara A Misztal, 'Political Forgiveness' Transformative Potentials' (2016) 29 Int J Polit Cult Soc 1, 12

[34] Misztal (n 33) 12. See also Aletta J Norval, 'No Reconciliation Without Redress: Articulating Political Demands in Post-transitional South Africa' (2009) 6 (4) Critical Discourse Studies 311, 316

[35] Manuel Cardenas et al 'How Transitional Justice Processes and Official Apologies Influence Reconciliation: The Case of the Chilean 'Truth and Reconciliation' and 'Political Imprisonment and Torture' Commissions' 26 (2015) Journal of Community & Applied Social Psychology 515, 517

[36] Daly (n 25) 95

[37] Ibid. See also Patricia Lundy and Mark McGovern, 'Whose Justice?: Rethinking Transitional Justice from the Bottom-Up' (2008) 35 (2) Journal of Law and Society 265; see also Laurel E Fletcher and Harvey M Weinstein, 'Violence and Social Repair: Rethinking the Contribution of Justice to Reconciliation' (2002) 24 (3) Hum Rts Q 573, 612; see also Paul Gready, 'Analysis: Reconceptualising Transitional Justice: Embedded and Distanced Justice' (2005) 5(1) Conflict, Security & Development 3, 7

[38] Lambourne W, 'Transitional Justice and Peacebuilding after Mass Violence' (2009) 3 International Journal of Transitional Justice 28, 44

[39] Daly (n 25) 97

[40] Ibid

effects.[41] Institutions should not be constrained by past practices as it is the past practice which is often challenged in transitional times.[42] These were all considered in this thesis as components of TJ mechanisms relevant to the IPC. Problems surrounding the process before the IPC have been captured by the circumstances on the ground such as the lack of both political will and the capacity of the relevant state and the resources available to translate initiatives into policy which might prevent mechanisms delivering transformation. UN "peace process" as a parallel track to that of the ECtHR precedents could be considered as another aspect causing contradictions at times, an example of which are the UN resolutions with respect to fenced-off Varosha pending unimplemented for years since the parties could not come to a solution on how to open the area up under UN administration to allow for the resettlement of its legal inhabitants. At the same time, some properties in the area are subject of 280 applications pending before the IPC and there have been cases before the ECtHR claiming the IPC cannot provide for an effective remedy for these complaints.

Again, inclusive processes such as those in Tunisia and Colombia have also been considered as possible models for Cyprus. A recent survey in Cyprus found that the inclusion of displaced persons in the process could positively influence the outcome of a future settlement depending on the degree they were consulted on property issues and the right to return.[43] A comprehensive census survey of preferences among all displaced persons could address how many GCs would want to have their properties restored, where this could address and ease the insecurities of TCs in this regard.[44] Research shows that TC perceptions of TJ are similar to that of GCs; i.e. the more TC participants adhere to notions of retributive justice, the less they are ready to live together with GCs.[45] Taking these findings into account with other research showing that intergroup contact has an impact on the reduction of prejudice,[46] it can be concluded that the IPC could have provided a space for the building of trust. However, under current circumstances this is not viable unless the practices change. In addition to problems the IPC has faced, this also resulted from

[41] Ibid
[42] Ibid 111
[43] Psaltis, Cakal, Loizides and Bonnenfant (n 23) 149
[44] See Charis Psaltis, Neophytos Loizides, Alicia LaPierre and Djordje Stefanovic, 'Transitional Justice and Acceptance of Cohabitation in Cyprus (2019) 42 (11) Ethnic and Racial Studies 1850
[45] Ibid
[46] Thomas F Pettigrew and Linda R Tropp, 'A Meta Analytic Test of Intergroup Contact Theory' (2006) 90 (5) Journal of Personality and Social Psychology 751

the fact that it has a one-sided character established by pressure from the Strasbourg Court and having limited "reparation" tools at hand. There is no comparable process for TCs who abandoned property in the south when they fled north. The thesis attempted to make proposals regarding the need to improve the process before the IPC. However, it did not propose answers for all relevant problems. The key conclusions here could be taken forward as areas to be explored further by scholars and practitioners, particularly regarding the need to explore strategies of inclusive processes to promote TJ and TTJ. The aim in highlighting these themes is to develop further initiatives through future research and practice to arrive at more detailed conclusions regarding the content of effective TJ/TTJ strategies.

Despite the fact that the IPC provides remedies to GCs within the limited framework provided by its Law, it is currently not possible for GCs to achieve more rights than afforded by this Law. From this perspective, the property problem with respect to GC properties could be considered as stalled within the current mandate of the IPC, while the same is also true of those of TCs within the mandate of the Custodian in the south. This is why liminality is considered a feature of contemporary Cyprus. Where the transition will lead to depends on whether partition is permanent or temporary. It is acknowledged that remedies provided by the IPC alone could not transform the root causes of conflict since this would be to latch duties to an institution more than it can deliver. But, as long as the situation remains as it is, it is important to understand the extent to which institutions, processes and developments affect this positively, negatively or not at all. The potential of the IPC in this regard is important since it serves as an example for a pre-solution mechanism to be established both for GC and TC properties abandoned in both sides of the island, thus paving the way for delinking the issue of property from a wider solution of the Cyprus problem.

Bibliography

Books

Adamides C and Constantinou C M, 'Comfortable Conflict and (Il)liberal Peace in Cyprus', in *Hybrid Forms of Peace: From Everyday Agency to Post-Liberalism* (eds), Oliver P Richmond and Audra Mitchell (Palgrave Macmillan 2012)

Allen T and Douglas B, 'Closing the Door on Restitution' in Antoine Buyse and Michael Hamilton (eds), *Transitional Jurisprudence and the ECHR: Justice Politics and Rights* (Cambridge University Press 2016)

Andrew S, The Time of Reconciliation and the Space of Politics, *Law and Politics of Reconciliation* (ed), Scott Veitch (Aldershot: Ashgate 2007)

Arber S, 'Secondary analysis of survey data' in Nigel Gilbert (ed) *Researching social life* (2nd edn London: Sage 2006)

Buyse A and Hamilton M, 'Introduction' in Antoine Buyse and Michael Hamilton (eds), *Transitional Jurisprudence and the ECHR: Justice Politics and Rights* (Cambridge University Press 2016)

Cavallaro J L and Albuja S, 'The lost agenda: Economic crimes and truth commissions in Latin America and beyond' in Kieran McEvoy and Lorna McGregor, (eds) *Transitional Justice from Below: Grassroots Activism and the Struggle for Change* (Oxford 2008)

Chrysostomides K, The *Republic of Cyprus: A Study in International Law* (Martinus Nijhoff Publishers 2000)

Clerides G, *Cyprus: My Deposition* (Alithia Publishing, Nicosia, 1992)

Collins C, *Post-Transitional Justice: Human Rights Trials in Chile and El Salvador* (The Pennsylvania State University Press 2010)

De Grieff P, 'Articulating the Links between Transitional Justice and Development: Justice and Social Integration', in Paul De Grieff and Roger Duthie (eds), *Transitional Justice and Development: Making Connections, International Center for Transitional Justice* (New York 2009)
— — 'Transitional Justice and Development', in Curie-Alder et al (eds), *International Development: Ideas, Experience and Prospects* (Oxford University Press 2014)

Dobinson I and Johns F 'Qualitative Legal Research' in Mike McConville and Wing Hong Chui (eds) *Research Methods for Law* (Edingburgh University Press 2010)

Elazar D J, *Exploring Federalism* (The University of Alabama Press 1987)

Elster J, *Closing the Books: Transitional Justice in Historical Perspective* (Cambridge University Press 2004)

Evre B, *Kıbrıs Türk Milliyetçiliği: Oluşumu ve Gelişimi [Turkish Cypriot Nationalism: Its Creation and Development]* (Işık Kitabevi 2004)

Fielding N and Thomas H, 'Qualitative Interviewing' in Nigel Gilbert (ed) *Researching social life* (2nd edn London: Sage 2006)

Fitzpatrick D and Fishman A, 'Land Policy and Transitional Justice After Armed Conflicts' in Dustin N Sharp (ed) *Justice and Economic Violence in Transition (*New York: Springer 2014)

Gray C D, *Judicial Remedies in International Law* (Oxford 1990)

Gready P, *The Era of Transitional Justice: The Aftermath of the Truth and Reconciliation Commission in South Africa and Beyond* (Routledge 2011)

Gross A, *The Writing on the Wall, Rethinking the International Law on Occupation* (Cambridge University Press, 2017)

Hakim C, *Research Design: Successful Designs for Social and Economic Research* (Routledge 2000)

Halberstam D, *War in a Time of Peace: Bush, Clinton and the Generals* (Scribner New York 2001)

Hammersley M, 'Case Study' in Saul Becker, Alan Bryman and Harry Ferguson (eds) *Understanding Research for Social Policy and Practice, Themes, Methods and Approaches* (2nd edn Bristol: Policy Press)

Hoffmeister F, *Legal Aspects of the Cyprus Problem Annan Plan and EU Accession (*Martinus Nijhoff Publishers 2006)

Huggins C, 'Linking broad constellations of ideas: Transitional justice, land tenure reform, and development' in Pablo Greiff and Roger Duthie (eds) *Transitional Justice and Development: Making Connections* (New York: Social Science Research Council, 2009)

Huntington S P, *The Third Wave: Democratization in the Late Twentieth Century* (University of Oklahoma Press 1991)

Jusdanis G, *The Necessary Nation* (Princeton University Press 2001)

Kızılyürek N, *Milliyetçilik Kıskacında Kıbrıs [Cyprus in the Claws of Nationalism]* (İletişim Yayınları 2002)
— — 'Historical Grounds of a Federal State in Cyprus' in *The Cyprus Conflict: Looking Ahead* (ed) Ahmet Sözen (Eastern Mediterranean University Press 2008)

— — *Bir Hınç ve Şiddet Tarihi: Kıbrıs'ta Statü Kavgası ve Etnik Çatışma [A History of Vengeance and Violence: Battle of Status and Ethhic Conflict in Cyprus]* (İstanbul Bilgi Üniversitesi Yayınları 2016)
— — and Erhürman T, *Kıbrıs'ta Federalizm: Öznesini Arayan Siyaset* [Federalism in Cyprus: Politics in Search of Its Subject] (Işık Kitabevi 2009)

Kovras I, *Grassroots activism and the evolution of Transitional Justice: the Families of the Disappeared* (Cambridge University Press 2017)

Kritz N J, *Transitional Justice: How Emerging Democracies Reckon with Former Regimes* (United States Institute of Peace Press Washington 1995)

Kumar R, *Research Methodology, A Step-by-Step Guide for Beginners* (Sage 1996)

Lambourne W, 'Transformative justice, reconciliation and peacebuilding'in Susanne Buckley-Zistel, Teresa Koloma Beck, Christiane Braun and Friederike Mieth (eds) *Transitional Justice Theories (*Abingdon: Routledge 2014)

Lange J, 'The Historical Context, Legal Origins and Philosophical Foundations of the South African Truth and Reconciliation Commission', in Charles Villa-Vicencio, and Wilhelm Verwoerd, (eds), *Looking Back, Reaching Forward* (UCT Press 2000)

Loizides N, *Designing Peace: Cyprus and Institutional Innovations in Divided Societies* (Philadelphia: University of Pennsylvania Press 2016)

Mallinson W, *Partition through Foreign Aggression: The Case of Turkey in Cyprus* (University of Minnesota Minneapolis 2010)

Mani R, *Beyond Retribution: Seeking Justice in the Shadows of War* (Cambridge 2002)
— — 'Does Power Trump Morality? Reconciliation or Transitional Justice' in Hughes E, Schabas W A and Thakur R, (eds), *Atrocities and International Accountability: Beyond Transitional Justice* (Tokyo United Nations University Press 2007)

Marshall C and Rossman G B, *Designing Qualitative Research* (6th edn, Sage Publications 2016)

McAuliffe P, *Transformative Justice and the Malleability of Post-Conflict States* (Edward Elgar 2017)

McConville M and Hong Chui W, *Research Methods for Law* (Edingburgh University Press 2010)

McEvoy K, 'Letting Go of Legalism: Developing a "Thicker" Version of Transitional Justice' in Kieran McEvoy and Lorna McGregor (eds) *Transitional*

Justice from Below: Grassroots Activism and the Struggle for Change (Oxford, 2008)

Miles M B and Huberman M A, *Qualitative Data Analysis: An Expanded Sourcebook* (2nd edn, Sage Publictaions 1994)

Murphy C, *A Moral Theory of Political Reconciliation* (Cambridge University Press 2010)

Necatigil Z M, *The Cyprus Question and the Turkish Position in International Law* (Oxford University Press, 2nd edn, 1989)

O'Donnel G and Schmitter P C, Transitions *from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies* (The John Hopkins University Press 2013)

Offe C, *Varieties of Transition: The East European and East Germen Experienc*e (MIT Press Cambridge 1997)

Olsen T D, Leigh A P and Reiter A G, *Transitional Justice in Balance: Comparing Processes, Weighing Efficacy* (United States Institute of Peace Press Washington 2010)

Ovey C and White R C A, *The European Convention on Human Rights* (Oxford University Press 2010)

Özersay K 'Separate Simultaneous Referenda in Cypurs: Was it a "Fact" or an "Illusion"?' in Sözen A (ed) *Reflections on the Cyprus Problem: Compilation of Recent Academic Contributions* (Cyprus Policy Center 2004)
— — and Ayla Gürel, 'The Cyprus Problem at the European Court of Human Rights' in Thomas Diez and Nathalie Tocci (eds), *Cyprus: A Conflict at the Crossroads, Manchester University Press*, 2009

Palley C, *An International Relations Debacle, The UN Secretary-General's Mission of Good Offices in Cyprus 1999-2004* (Hart Publishing 2004)

Patel A C, 'Transitional Justice, DDR, and Security Sector Reform' in Anna C Patel, Pablo De Greiff and Lars Waldorf (eds) *Disarming the Past: Transitional Justice and Ex-combatants.* New York: Social Science Research Council 2009)

Proukaki E K, *Armed Conflict and Forcible Displacement: Individual Rights Under International Law* (Routledge 2018)

Richmond O, 'UN Mediation in Cyprus, 1964–65: Setting a Precedent for Peace-making?', in James Ker-Lindsay and Oliver Richmond (eds) *The Work of the UN in Cyprus: Promoting Peace and Development* (Hampshire, Palgrave Macmillan 2001)

Robins S, *Families of the missing: A Test for Contemporary Approaches to Transitional Justice* (New York / London: Routledge Glasshouse 2013)

Robson C, *Real World Research* (2nd edn Malden: Blackwell Publishing 2002)

Roht-Arriaza N, 'The new landscape of transitional justice' in Naomi Roht-Arriaza and Javier Mariezcurrena (eds) *Transitional justice in the Twenty-First Century: Beyond Truth versus Justice.* (Cambridge University Press 2006)

Skoutaris N, *The Cyprus Issue: The Four Freedoms in a Member State under Siege* (Hart Publishing 2011)

Sözen A, 'A Model of Power-Sharing in Cyprus: From the 1959 London-Zurich Agreements to the Annan Plan' in Ahmet Sözen (ed), *Reflections on the Cyprus Problem: Compilation of Recent Academic Contributions* (Cyprus Policy Center 2004)
— — 'The Cyprus Negotiations: From the 1963 Inter-communal Negotiations to the Annan Plan' Ahmet Sözen (ed), *Reflections on the Cyprus Problem: Compilation of Recent Academic Contributions* (Cyprus Policy Center 2004)

Stefanidis I D, *Isle of Discord, Nationalism, Imperialism and the Making of Cyprus Problem* (Hurst & Company, London 1999)

Steinberg J, 'Reflections on Intergenerational Justice' in Alice H Henkin (ed), *Legacy of Abuse: Confronting the Past, Facing the Feature* (The Aspen Institute 2002)

Sweeney J A, *The European Court of Human Rights in the Post-Cold War Era: Universality in Transition* (Routledge 2013)

Taylor C, *Nationalism and Modernity in Ronald Beiner Theorizing Nationalism* (State University of New York Press, Albany 1999)

Teitel R, *Transitional Justice* (Oxford University Press 2002)
— — *Humanity's Law* (Oxford University Press 2011)

Tocci N, 'The Missed Opportunity to Promote Reunification in Cyprus' in Ahmet Sözen (ed), *The Cyprus Conflict: Looking Ahead* (Cyprus Policy Center 2008)

Tutu D, *No Future without Forgiveness* (London Rider 1999)

Webel C, 'Toward a philosophy and metapsychology of peace' in Charles Webel and Johan Galtung (eds) *Handbook of Peace and Conflict Studies (*Routledge 2007)

Yakinthou C, *Political Settlements in Divided Societies: Consociationalism and Cyprus* (Palgrave Macmillan 2009)

Yin R K, *Case Study Research Design and Methods* (3rd edn Sage Publications 2002)
— — *Case Study Research Design and Methods* (5th edn Sage Publications 2014)

Journal Articles, Reports and Theses

Aiken N T, 'The Bloody Sunday Inquiry: Transitional Justice and Postconflict Reconciliation in Northern Ireland' (2015) 14 Journal of Human Rights 101

Akgün M, Gürel A, Hatay M and Tiryaki S, 'Quo Vadis Cyprus?' (Tesev Working Paper, April 2005)

Allen T, 'Transitional Justice and the Right to Property under the European Convention on Human Rights' (2005) 16 Stellenbosch Law Review 413
— — 'Restitution and Transitional Justice in the European Court of Human Rights' (2006-2007) 13 Columbia Journal of European Law 4

Amnesty International, 'Northern Ireland: Time to Deal with the Past' (EUR 45/004/2013 September 2013)

Anastasiou H, 'Nationalism as a Deterrent to Peace and Interethnic Democracy: The Failure of Nationalist Leadership from The Hague Talks to the Cyprus Referendum' (2007) 8 International Studies Perspectives 190

Angelica M P, 'Conflict Resolution Training Efforts Sponsored by the Fullbright Commission (1993-1998) (Nicosia: Cyprus Fullbright Commission 1999)

Aoláin F N, Campbell C and Harvey C, 'The frontiers of Legal Analysis: Reframing the Transition in Northern Ireland' (2003) 66 (3) Modern Law Review 317
— — and Campbell C, 'The Paradox of Transition in Conflicted Democracies' (2005) 27 (1) Human Rights Quarterly 172
— — and Campbell C and Bell C, 'Transitional Justice: (Re)Conceptualising the Field' (2007) 3 (2) International Journal of Law in Context 81

Arbour L, 'Economic and Social Justice for Societies in Transition' (2007) 40 New York University Journal of International Law and Politics 1

Arthur P, 'How "Transitions" Reshaped Human Rights: A Conceptual History of Transitional Justice' (2009) 31 (2) Human Rights Quraterly 321

Ballard M J, 'Post-conflict Property Restitution: Flawed Legal and Theoretical Foundations', (2010) 23 Berkeley Journal of International Law 462

Balasco L M, 'The Transitions of Transitional Justice: Mapping the Waves from Promise to Practice' (2013) 12 Journal of Human Rights 198
— — 'Locating Transformative Justice: Prism or Schism in Transitional Justice?' Review Essay (2018) 12 International Journal of Transitional Justice 368

Bell C, 'Transitional Justice, Interdisciplinarity and the State of the 'Field' or 'Non-Field'' (2009) 3 International Journal of Transitional Justice 5

Blacksell M and Born K M, ‘Private Property Restitution: The Geographical Consequences of Official Government Policies in Central and Eastern Europe’ (2002) 168 (2) The Geographical Journal 178
— — and Born K M ‘Private Property Restitution: The Geographical Consequences of Official Government Policies in Central and Eastern Europe’ (2002) 168 (2) The Geographical Journal 179

Blustein J, 'Forgiveness, Commemoration, and Restorative Justice: The Role of Moral Emotions' (2010) 42 (4) Metaphilosophy 582

Borders J C,' Another Door Closed: Resort to the European Court of Human Rights for Relief from the Turkish Invasion of 1974 May No Longer Be Possible for Greek Cypriots' (2010) 36 North Carolina Journal of International Law and Commercial Regulation 689

Bryant R, ‘Life Stories: Turkish Cypriot Community' (Prio Cyprus Centre, Nicosia, 2012)
— — ‘Partitions of Memory: Wounds and Witnessing in Cyprus’, (2012) 54(2) Comparative Study of Society and History 332
— — ‘History’s Remainders: On Time and Objects after Conflict in Cyprus' (November 2014) 41 (4) American Ethnologist 681
— — ‘Living with Liminality: De Facto States of the Threshold of the Global', (2014) 20 (2) Brown Journal of World Affairs 125
— — and Hatay M, ‘Suing for Sovereignty: Property, Territory and the EU’s Cyprus Problem’ (Global Political Trends Center, Policy Brief, 2009)

Buyse A, ‘Post-conflict Housing Restitution: The European Human Rights Perspective with a Case Study on Bosnia and Herzegovina’ (School of Human Rights Research Series, Volume 25, E.M Meijers Instituut 2007)
— —‘Home Sweet Home? Restitution in Post-Conflict Bosnia and Herzegovina’ (2009) 27 Netherlands Quarterly of Human Rights 9

Campbell C, Ni Aolain F and Harvey C, 'The frontiers of Legal Analysis: Reframing the Transition in Northern Ireland' (2003) 66 (3) Modern Law Review 317

Cardenas M, Paez D, Rime B and Arnoso M, ‘How Transitional Justice Processes and Official Apologies Influence Reconciliation: The Case of the Chilean ‘Truth and Reconciliation’ and ‘Political Imprisonment and Torture’ Commissions’ 26 (2015) Journal of Community & Applied Social Psychology 515

Carranza R, ‘Plunder and Pain: Should Transitional Justice Engage with Corruption and Economic Crimes?’ (2008) 2 (3) International Journal of Transitional Justice 310
— — ‘Relief, Reparations and the Root Causes of Conflict in Nepal’ (ICTJ, 2012)

Coufoudakis V, 'United Nations Peacekeeping and the Cyprus Question' (1976) 29 (3) The Western Political Quarterly 457

Cyprus 2015 Initiative Report, 'Solving the Cyprus Problem: Hopes and Fears' (Interpeace/Cyprus 2015 Initiative 2011)

Colak E, 'Property Rights in North Cyprus' (Turkish Cypriots Human Rights Foundation Publications No 2, 2012)

Dagli I, 'Securitization of Ethnic Communities in Conflict Environments and its Implications for Peace-Building: The Case of Cyprus' (PhD Dissertation University of Warwick, 2016)

Daly E, 'Transformative Justice: Charting a Path to Reconciliation' (2001-2002) 12 International Legal Perspectives 73

Dancy G, Kim H and Wiebelhaus-Brahm E, 'The Turn to Truth: Trends in Truth Commission Experimentation' (2010) 9 (1) Journal of Human Rights 45

David R, 'Transitional Justice and Changing Memories of the Past in Central Europe' (2015) 50 Government and Opposition 24

Devenish G, 'Constitutional and Political Developments' (1995) 6 South African Human Rights Yearbook 19

Dodd C, 'Constitutional Features of the UN Plan and its Antecedents' (2005) 6 (1) Turkish Studies 39

Donais T, 'Power Politics and the Rule of Law in Post-Dayton Bosnia', (2013) 7 (2) Studies in Social Justice 189

Duthie R, 'Toward a Development-Sensitive Approach to Transitional Justice' (2008) 2(3) International Journal of Transitional Justice 292

Elster J, 'On Doing What One Can: An Argument against Restitution and Retribution as a Means of Overcoming the Communist Legacy' (1992) 1 East European Constitutional Review 15

Par Engstrom, 'Transitional Justice and Ongoing Conflict' (Unpublished)

Erdem M and Greer S, 'Human Rights, the Cyprus Problem and the Immovable Property Commision' (2018) 67 International and Comparative Law Quraterly 721

Evans M, 'Structural Violence, Socioeconomic Rights, and Transformative Justice', (2016) 15 (1) Journal of Human Rights 1

Firchow P, 'Do Reparations Repair Relationships? Setting the Stage for Reconciliation in Colombia' (2017) 11 International Journal of Transitional Justice 315

Fletcher L E and Weinstein H M, 'Violence and Social Repair: Rethinking the Contribution of Justice to Reconciliation' (2002) 24 (3) Human Rights Quarterly 573

Fisher R J, 'Cyprus: The Failure of Mediation and the Escalation of an Identity-Based Conflict to an Adversarial Impasse' (2001) 38 (3) Journal of Peace Research 307

Rebekka Friedman, 'The Pitfalls and Politics of Holistic Justice' (2015) 6 (2) Global Policy 141

Galtung J, 'An Editorial ' (1964) 1 (1) Journal of Peace Research 1
— — 'Violence, peace, and peace research' (1969) 6 (3) Journal of Peace Research 167

Gelpern A, 'The Laws and Politics of Reprivatization in East-Central Europe: A Comparison' (1993) 14 (3) Journal of International Law 315

Gross A, 'Reinforcing the new democracies: the European Convention on Human Rights and the Former Communist Countries - a study of the case law' (1996) 7 (1) European Journal of International Law 89

Gready P, 'Analysis: Reconceptualising Transitional Justice: Embedded and Distanced Justice' (2005) 5(1) Conflict, Security & Development 3
— — and Robins S, 'From Transitional to Transformative Justice: A New Agenda for Practice' (2014) 8 International Journal of Transitional Justice 339
— —, Jelke Boesten, Gordon Crawford and Polly Wilding, Transformative Justice – A Concept Note (2010) Unpublished manuscript

Greer S and Wildhaber L, 'Revisiting the Debate about 'constitutionalising' the European Court of Human Rights', (2012) 12 (4) Human Rights Law Review 655

Gürel A and Özersay K, 'The Politics of Property in Cyprus, Conflicting Appeals to 'Bizonality' and 'Human Rights' by the Two Cypriot Communities' (Prio Report, 3/2006)
— — Hatay M, and Yakinthou C, 'Displacement in Cyprus: Consequences of Civil and Military Strife Report 5' (Prio Cyprus Centre, Nicosia 2012)

Hadjipavlou-Trigeorgis M and Trigeorgis L Source 'Cyprus: An Evolutionary Approach to Conflict Resolution Author(s)' (1993) 37 (2) The Journal of Conflict Resolution 340
— — 'The Cyprus Conflict: Root Causes and Implications for Peacebuilding' (2007) 44 Journal of Peace Research 349
— — and Bülent Kanol, 'Cumulative impact case study: The impacts of peacebuilding work on the Cyprus conflict' (CDA Collaborative Learning Projects 2008)

Halpern S M, 'The Disorderly Universe of Consociational Democracy' (1986) 9 Western European Politics 181

Halse C and Honey A, 'Unraveling Ethics: Illuminating the Moral Dilemmas of Research Ethics'(2005) 30(4) Signs 2141

Hamit M, 'Turkish Cypriots and Their Others: An Analysis of Narratives About Greek Cypriots and Turkiyeliler' (Thesis Submitted to the Graduate School of Social

Sciences of Middle East Technical University for the Degree of Master of Science, July 2008)

Harvey J, ‘Return Dynamics in Bosnia and Croatia: A Comparative Analysis’ (2006) 44 (3) International Migration 89

Hatay M and Bryant R, Negotiating the Cyprus Problem(s) (Tesev Publications 2011)

— — and Tzimitras H, ‘The Need for Realism: Solving the Cyprus Problem Through Linkage Politics’, (Policy Paper October 2016 Number 9 The Center on the United States and Europe at Brookings- Turkey Project)

Hatzivassilou E, 'The Red Line: Pressure and Persuasion in Greek Diplomatic Strategies on Cyprus, 1945 to 2004' (2009) 20 (1) Mediterranean Quarterly 52

Hayner P, ‘Negotiating peace in Liberia: Preserving the possibility for Justice’ (ICTJ – Centre for Humanitarian Dialogue 2007)

Heller M and Serkin C, ‘Revaluing Restitution: From the Talmud to Postcolonialism’ (1999) 97 Michigan Law Review 1385

Heraclides A, 'The Cyprus Gordion Knot: An Intractable Ethnic Conflict' (2011) 17 (2) Nationalism and Ethnic Politics 117

Human Rights Watch, ‘Justice Compromised, The Legacy of Rwanda’s Community-Based Gacaca Courts’ (31 May 2011)

Hyde-Price A, 'European Security, Strategic Culture, and the Use of Force' (2004) 13 (4) European Security 323

Hlyton K N, ‘A Framework for Reparations Claims Boston University School of Law Working Paper Series’ (Law and economics working paper no. 03-05, 2003)

International Crisis Group, 'Cyprus: Bridging the Property Divide' (Report No 210, 9 December 2010)

Kanol B and Kanol D, ‘Roadblocks to Peacebuilding Activities in Cyprus: International Peacebuilding Actors’ Handling of the Recognition Issue’ (2013) 4 (2) Journal of Conflictology 39

Kaymak E, 'Growing Apart, Cementing Division: Civil Society and the Dearth of Ideas' in The Cyprus Conflict Looking Ahead edited by Ahmet Sözen (Eastern Mediterranean University Printing-House, 2008)

Kennedy J, ‘Grey Matter: Ambiguities and Complexities of Ethics in Research’ (2005) 3(2) Journal of Academic Ethics 143

Kızılyürek N and Gauter S, “The Politics of Identity in the Turkish Cypriot Community and the Language Question” (2004) International Journal of the Sociology of Language 37

Kovras I, ‘De-linkage processes and grassroots movements in transitional justice’ (2012) 47 (1) Cooperation and Conflict 88

Kozminski A K ‘Restitution of Private Property, Re-privatization on Central and Eastern Europe’ (1997) 30 (1) Communist and post-communist Studies 95

Lambourne W, ‘Transitional Justice and Peacebuilding after Mass Violence’ (2009) 3 International Journal of Transitional Justice 28
— — 'What are the Pillars of Transitional Justice? The United Nations, Civil Society and the Justice Cascade in Burundi' (2014) 13 Macquarie Law Journal 41

Laplante L L, ‘On the indivisibility of rights: truth commissions, reparations, and the right to development’ (2007) 10 Yale Human Rights & Development Law Journal 141

Lacher H and Kaymak E, ‘Transforming Identities: Beyond the Politics of Non-Settlement in North Cyprus’ (2005) 10 (2) Mediterranean Politics 147

Leebaw B A, ‘The Irreconcilable Goals of Transitional Justice’ (2008) 30 Human Rights Quarterly 95

Lordos A, 'Can the Cyprus Problem be solved? Understanding the Greek Cypriot Response to the UN Peace Plan for Cyprus' (2004)

Loukaides G L, ‘Is the European Court of Human Rights Still a Principled Court of Human Rights after the Demopoulos case?’ (2011) 24 (2) Leiden Journal of International Law 435

Lundy P and McGovern M, 'Whose Justice?: Rethinking Transitional Justice from the Bottom-Up' (2008) 35 (2) Journal of Law and Society 265

Lykes M B and Merwe H van der ‘Exploring/Expanding the Reach of Transitional Justice’ (2017) 11 International Journal of Transitional Justice 371

Lynn M. Fisher and Austin J. Jaffe, ‘Restitution in Transition Countries’ (2000) 15 Journal of Housing and the Built Environment 233

Magarrell L, ‘Reparations in Theory and Practice’ (ICTJ 2007)

Mani R, ‘Balancing Peace with Justice in the Aftermath of Violent Conflict’ (2005) 48(3) Development 25
— — ‘Rebuilding An Inclusive Political ommunity After War’ (2005) 36 (4) Security Dialogue 51

— — ‘Dilemmas of Expanding Transitional Justice, or Forging the Nexus between Transitional Justice and Development' (2008) 2 International Journal of Transitional Justice 253

Matson L, 'Competing Land Rights, Legal Redress, and Political Settlement in Cyprus', (2012-2013) 31 Law & Inequality 199

McAuliffe P, ‘Transitional Justice’s Expanding Empire: Reasserting the Value of the Paradigmatic Transition’ (2011) 2 (2) Journal of Conflictology 32

Meier B M, 'Reunification of Cyprus: The Possibility of Peace in the Wake of Past Failure' (2011) 34 (2) Cornell International Law Journal 455

Michalis S M ‘Cypriot-led, Cypriot-owned’: Cyprus talks revisited (2013) 67 (4) Australian Journal of International Affairs 526

Miller Z, ‘Effects of Invisibility: In Search of the “Economic” in Transitional Justice’ (2008) 2 (3) International Journal of Transitional Justice 266

Misztal B A, 'Political Forgiveness' Transformative Potentials' (2016) 29 International Journal of Politics, Culture and Society 1

Mowbray A, ‘The European Court of Human Rights’ Approach to Just Satisfaction’, [1997] Public Law 647

Moyo K, ‘Mimicry, Transitional Justice and the Land Question in Racially Divided Former Settler Colonies’. (2015) 9 (1) International Journal of Transitional Justice 70

Nagy R, ‘Transitional Justice as a Global Project: Critical Reflections' (2008) 29 (2) Third World Quarterly 275

Ní Aoláin F and Campbell C, ‘The Paradox of Transition in Conflicted Democracies' (2005) 27 (1) Human Rights Quarterly 172

Norval A J, ‘‘No Reconciliation without Redress': Articulating Political Demands in Post-transitional South Africa' (2009) 6 (4) Critical Discourse Studies 311

Özersay K, ‘Exhaustion and Time for Change’ (2012) 24 (4) Peace Review 406

Özveri D, 'Cyprus Property Dispute through the Glance of Immovable Property Commission', (2013) 8/6 Turkish Studies 591

Papadakis Y, ‘Greek Cypriot narratives of history and collective identity: Nationalism as a Contested Process’ (1998) 25 (2) American Ethnologist 149
__ __‘Narrative, Memory and History Education in Divided Cyprus: A Comparison of Schoolbooks on the “History of Cyprus”’ (2008) 20 (2) History & Memory 128

Pen˜alver E M, ‘Redistributing Property: Natural Law, International Norms, and the Property Reforms of the Cuban Revolution,’ (2000) 52(1) Florida Law Review 107

Pettigrew T F and Tropp L R, ‘A Meta Analytic Test of Intergroup Contact Theory’ (2006) 90 (5) Journal of Personality and Social Psychology 751

Pham P and Vinck P, 'Empirical Research and the Development and Assessment of Transitional Justice Mechanisms' (2007) 1 International Journal of Transitional Justice 231

Platis S, Orphanides S and Mullen F, ‘The Property Regime in a Cyprus Settlement: A Reassessment of the Solution Proposed Under the Annan Plan, Given the Performance of the Property Markets in Cyprus, 2003–2006’ (Prio Report 2/2006)

Pogany I, ‘International Human Rights Law, Reparatory Justice and the Re-ordering of Memory in Central and Eastern Europe’ (2010) 10 (3) Human Rights Law Review 397

Posner E A and Vermeule A, ‘Transitional Justice as Ordinary Justice’ (2004) 117 (3) Harvard Law Review 761

Proukaki E K, ‘The Right of Displaced Persons to Property and to Return Home after Demopoulos’, (2014) 14(4) Human Rights Law Review 701

Psaltis C, Cakal H, Loizides N and Bonnenfant I K, ‘Internally Displaced Persons and the Cyprus Peace Process’ (2020) 4 (1) International Political Science Review 138

— — Neophytos Loizides, Alicia LaPierre and Djordje Stefanovic, ‘Transitional Justice and Acceptance of Cohabitation in Cyprus (2019) 42 (11) Ethnic and Racial Studies 1850

Reilly D, ‘Teaching Conflict Resolution: A Model for Student Research in Cyprus’ (2013) 4 Conflict Resolution Quarterly 447

Republic of Cyprus Embassy in the USA, 'The Cyprus Problem in Perspective' (July 2000)

Roederer C J, "Living Well is the Best Revenge' - If One Can: An Invitation to the Creation of Justice off the Beaten Path' (1999) 15 South African Journal on Human Rights 75

Rosand E, ‘The Right to Return under International Law Following Mass Dislocation: The Bosnia Precedent’ (1998) 19 Michigan Journal of International Law 1091

Roht-Arriaza N, ‘Transitional Justice and Peace Agreements the International Council on Human Rights Policy Review Meeting Peace Agreements: The Role of Human Rights Negotiations’ (Belfast 7-8 March 2005)

Sharp Dustin N, ‘Addressing Economic Violence in Times of Transition: Toward a Positive-Peace Paradigm for Transitional Justice’. (2012) 35 Fordham International Law Journal 780
— — ‘Interrogating the Peripheries: The Preoccupations of Fourth Generation Transitional Justice’. (2013) 26 Harvard Human Rights Journal 149
— — ‘Emancipating Transitional Justice from the Bonds of the Paradigmatic Transition’ (2015) 9 (1) International Journal of Transitional Justice 150

Satkunanathan A, 'The Politics of Reconciliation in Transitional Justice' (2014) 8 International Journal of Transitional Justice 171

Sert D Ş, ‘Cyprus: Peace, Return and Property’ (2010) 23(2) Journal of Refugee Studies 238

Sözen A, 'A Common Visison for a Way out of the Cyprus Conundrum' (2017) 15 (4) Turksih Policy Quarterly 27

Sitas A, Latif D and Loizou N, Prospects of Reconciliation, Co-Existence and Forgiveness in Cyprus in the Post-Referendum Period PRIO Report 4/2007

Skoutaris N, 'Building transitional justice mechanisms without a peace settlement: a critical appraisal of recent case law of the Strasbourg Court on the Cyprus issue', (2010) European Law Review 720

The Independent International Commission on Kosovo, 'The Kosovo Report' (Oxford University Press 2000)

Theophanous A, 'Revisiting the Cyprus Question and the Way Forward' (2017) 15 (4) Turkish Policy Quarterly 37

Teitel R, ‘Transitional Justice Genealogy’ (2003) 16 Harvard Human Rights Journal 69
— — 'Rethinking Jus Post Bellum in an Age of Global Transitional Justice: Engaging with Michael Walzer and Larry May' (2013) 24 (1) European Journal of International Law 335

Tra T Pham, **‘**Mass property claim resolution in a post-war society: the Commission for Real Property Claims in Bosnia and Herzegovina’ (1999) 48 (3) International and Comparative Law Quarterly 625

Turner C, 'Deconstructing Transitional Justice' (2013) 24 Law Critique 193

Tzimitras H and Hatay M, ‘The Need for realism: Solving the Cyprus Problem Through Linkage Politics’ (The Center on the United States and Europe at Brookings- Turkey Project Policy Paper October 2016 Number 9)

Van Houtte H, 'Mass property claim resolution in a post-war society: the Commission for Real Property Claims in Bosnia and Herzegovina', (1999) 48 International and Comparative Law Quarterly 625

Veraart W, ‘Redressing the past with an eye to the future, The impact of the passage of time on property rights restitution in post-apartheid South Africa’ (2009) 27 (1) Netherlands Quarterly of Human Rights 45

Villalba C S, ‘Transitional Justice: Key Concepts, Processes and Challenges’ (Institute for Democracy & Conflict Resolution – Briefing Paper, 2011)

Vinck P and Pham P, 'Empirical Research and the Development and Assessment of Transitional Justice Mechanisms' (2007) 1 International Journal Transitional Justice 231

— — and Pham P, ‘Ownership and Participation in Transitional Justice Mechanisms: A Sustainable Human Development Perspective from Eastern DRC' (2008) 2 International Journal of Transitional Justice 398

Waldorf L, ‘Anticipating the past: Transitional justice and socio-economic wrongs’ (2012) 21(2) Social & Legal Studies 171

Waters T M, ‘The Dayton Accords, Property Disputes, and Bosnia's Real Constitution’ 40 Harvard International Law Journal 517

Wiles R, Crow G, Heath S and Charles V, ‘The Management of Confidentiality and Anonymity in Social Research’ (2008) 11 (5) International Journal of Social Research Methodology 417

Williams R, ‘The Contemporary Right to Property Restitution in the Context of Transitional Justice’ (The International Center for Transitional Justice, May 2007)

White R C A, ‘Tackling political disputes through individual applications’ (1998) European Human Rights Law Review 61

US Department of State, Bureau of Democracy, Human Rights and Labour ‘2008 Human Rights Reports: Cyprus’ (Human Rights Reports on Democracy 25 February 2009)

Yakinthou C, ‘Transitional Justice in Cyprus, Challenges and Opportunities’ edited by Ahmet Sözen & Jared L. Ordway (Security Dialogue Project, Background Paper, Berlin: Berghof Foundation & SeeD 2017)

— — Buff C and Clifford L, ‘Advancing Transitional Justice in Conflict-Affected Contexts: A Case Study for Libya’ (IREX)

Yepes R, ‘Transformative Reparations of Massive Gross Human Rights Violations: Between Corrective and Distributive Justice' (2009) 27(4) Netherlands Quarterly of Human Rights 625

Newspaper Articles and Media Communications

‘Ağlayarak gelen Rumlar var’ ['There are Greek Cypriots who come in tears'], *Gündem Kıbrıs* (11 July 2017)

‘Anastasiades Blew ‘Such a Good Deal’’ *Cyprus Mail* (8 July 2017)

Andreou E, ‘Anastasiades says he does not want to play blame game, ready to continue negotiations’ *Cyprus Mail* (23 November 2016)
— — ‘Confidence building measures must reinforce negotiations’ *Cyprus Mail* (1 April 2017)
— —‘Justice must be seen done’, *Cyprus Mail* (7 August 2017)
— — ‘Protest Planned as North Discusses Opening of Varosha’ *Cyprus Mail* (15 February 2020)

Aygın E, ‘A Failure to Reach a Deal in Switzerland Could Scar Generations’ *In Cyprus* (15 July 2017)

’Bakan arabalarına Rum haciz koydurttu’ ['Seizeure over vehicles of the Minister'], *Havadis Gazetesi* (7 July 2015)

‘Body to compensate Greek Cypriot Refugees running out of funds’, *Cyprus Mail* (7 August 2017)

Cambas M, 'Cyprus Peace Talks Resume with Confidence Building Measures', *Reuters* (15 May 2015)

Christou J, ‘The Guterres Package’ *Cyprus Mail* (5 July 2017)

‘Conference on Cyprus reconvenes in Crans-Montana’, *UN Cyprus Talks* (28 June 2017)

‘Crans Montana Aftermath’ *In Cyprus* (15 July 2017)

‘Cyprus talks end without agreement, says UN chief’, *The Guardian* (7 July 2017)

‘Eide: they didn’t sound like people that were about to unify their homeland’ *Cyprus Mail (*22 July 2017)

‘Erhürman’dan Maraş Açıklaması: “Doğru Değil”’ [Varosha Statement by Erhürman: This is not Right] *Yenidüzen* (12 February 2020)

Evripidou S, ‘IPC insists Tymvios case sets precedent’, *Cyprus Internet Directory* (no date available)
__ __ ‘The government approves first ever land swap deal’ Cyprus Property News (10 July 2012)

‘Far- right leader announces candidacy’ *Cyprus Mail* (4 November 2017)

‘Greek Cypriot leaders reject Annan plan’, *The Guardian* (22 April 2004)

‘Guterres yet to Decide on Next Step for UN role in Cyprus’, *Cyprus Mail* (8 July 2017)

Hatay M, ‘Ganimetin Sosyal Adaleti’ [Social Justice of Looting], *Havadis Gazetesi, Poli* (Issue 268)
— — ‘Ganimetin Sosyal Adaleti’ [Social Justice of Looting] *Havadis Gazetesi, Poli* (Issue 270)

Hazou E, ‘Solidarity Movement endorses Papadopoulos’, *Cyprus Mail* (4 May 2017)

Kapalı Maraş’ta “Hukuki, Siyasi ve Ekonomik Yönleri ile Kapalı Maraş Açılımı” başlıklı yuvarlak masa toplantısı yapılacak’ [A round table meeting called “Legal, Political and Economic Aspects of the initiative for fenced-off Varosha” will be held in the fenced-off Varosha] *BRT* (13 February 2020)

‘Karar var Ödeme yok’ ['There are Decisions but not Payments'], *Gündem Kıbrıs* (10 December 2015)

Kızılyürek N, ‘En iyi çözüm mümküm olan çözümdür’ [The Best Solution is the one that is Possible] *Yenidüzen* (2 July 2017)

‘Maddi Tıkanıklığı Aşacak Öneriler’ [Proposals to Overcome Financial Burden], *Yenibakış Gazetesi* (10 March 2018)

Mehmet V, ‘Anastaisades Crans Montana Sonrası Seçim Kampanyasında Büyük Sıkıntıya Girdi’ [Anastasiades Having Trouble during the Election Campaign following Crans Montana], *Kıbrıs Postası* (10 Temmuz 2017)

Muller F, ‘Unite Cyprus Now Proves the Island’s Potential’, *In Cyprus* (10 June 2017)

Panayiotides C, ‘The Partition of Cyprus is In Sight’, *Cyprus Mail* (8 August 2017)

‘Özersay: Rum Liderliğini Maraş sürecine dahil edecek yaklaşımlardan uzak durulmalı’ [Özersay: Any steps to include the Greek Leadership in the Varosha process should be avoided] *BRT* (13 February 2020)

‘Papadopoulos presents ‘new’ settlement strategy’, *Cyprus Mail* (29 September 2017)

Paraschos A, ‘Swiss governance model instead of bizonal federation Interview with Leonidas Pantelides and Ahmet Sözen’ *K News Kathimerini* (18 February 2019)

‘Press Conference by President Akinci on his return from Mont Pelerin’, *In Cyprus* (22 November 2016)

Psyllides G, ‘Far right extremists disrupt reunification event’ *Cyprus Mail* (26 March 2014)
__ __ ‘Theocharous unveils Solidarity platform to ‘save Republic’’, *Cyprus Mail* (15 January 2016)

Rakoczy A, Government Urged to Act Over Attacks on Turkish Cypriots, *Cyprus Mail* (12 February 2017)

‘Remarks by Secretary-General António Guterres following his meeting with H.E. Mr. Nicos Anastasiades, Greek Cypriot leader; and H.E. Mr. Mustafa Akıncı, Turkish Cypriot leader’, *UN Cyprus Talks* (4 June 2017)

Reşat R, Onurer C, Barış U, ‘Kıbrıs sorununda tarihi eşik aşıldı! Haritalar kasada, garantörler artık masada’[The Cyprus Problem beyond the Threshold! The Maps in the Case, the Guarantors at the Table], *Kıbrıs Postası* (12 Ocak 2017)

'Rival Leaders of Cyprus Drink Zivania in Divided Capital', *Hürriyet Daily News* (23 May 2015)

Smith H, ‘The Peculiar Solution, Observations on Cyprus’, *News Statesman* (28 February 2008)

Smith H, ‘Cyprus reunification talks collapse amid angry scenes UN chief António Guterres says he is ‘very sorry’ as he announces no agreement reached in the early hours of the morning’, *The Guardian* (7 July 2017)

Statement by Stefanos Stefanou, AKEL C.C. Spokesperson, ‘Akel Demands Government Take Measures Against attacks on Turkish Cypriots’, *AKEL* (9 August 2016)

‘Turkish Cypriot Cars Vandalised on Troodos’, *In Cyprus* (7 February 2017)

Uçkan R, ‘Kıbrıs Sorununda Yeni Yöntem Arayışı’, *Birikim Dergisi* (30 July 2017)

‘UN chief ‘deeply sorry’ as Cyprus talks conclude without agreement’, *UN* (7 July 2017)

‘Who is ELAM?’, *TRNC Public Information Office* (24 May 2016)

Volkan İ, ‘İki toplumlu teknik, tek toplumlu tıkanık’, *Kıbrıs Gazetesi* (10 March 2017)

’35 milyon borçluyuz’ [We owe 35 million], *Yeni Bakış Gazetesi* (12 July 2015)

‘235 Milyon Sterlin’in 55 Milyonu Hala Ödenmedi’ ['£55 Million of £235 Million Still Unpaid'], *Meydan Kıbrıs* (4 June 2017)

'16 bin dönüm 235 milyon Sterlin’e Türk toprağı oldu’ [16,000 *donums* have become Turkish land for £235 million'], *Kıbrıs Gazetesi* (4 June 2017)

UN Documents

UN General Assembly Resolution 1287 (5 December 1958) A/Res/1287 (XIII)

UN Security Council Resolution 186 (4 March 1964) S/5575

Report of the Secretary General on the United Nations Operation in Cyprus (10 September 1964) S/5959

UN Security Council Resolution Res 353 (20 July 1974) S/Res/353

UN Security Council Resolution Res 367 (12 March 1975) S/Res/367

Report of the Secretay General Pursuant to Paragraph 6 of the Security Council Reolution 401 (1976) (30 April 1977) S/12323

Report of the Secretary General on His Mission of Good Offices in Cyprus (31 May 1979) S/13369

UN Security Council Res 541 (18 November 1983) S/Res/541

UN Security Council Resolution Res 550 (11 May 1984) S/Res/550

Report of the Secretary General on His Mission of Good Offices in Cyprus (8 March 1990) S/21183

UN Security Council Resolution Res 716 (11 October 1991) S/Res/716

Report of the Secretary General on his Mission of Good Offices in Cyprus (3 April 1992) S/23780

Report of the Secretary-General on His Mission of Good Offices in Cyprus (21 August 1992) S/24472

Report of the Secretary General on His Mission of Good Offices in Cyprus (19 November 1992) S/24830

UN Security Council Resolution Res 774 (26 August 1992) S/Res/774

UN Security Council Resolution 820 (17 April 1993) S/Res/820

Report of the Secretary General on his Mission of Good Offices in Cyprus (1 July 1993) S/26026

UN Security Council Resolution Res 876 (19 October 1993) S/Res/876

UN Security Council Resolution Res 971 (12 January 1995) S/Res/971

UN Security Council Resolution Res 1009 (10 August 1995) S/Res/1009

UN Security Council Resolution Res 1036 (12 January 1996) S/Res/1036

UN Security Council Resolution Res 1199 (23 September 1998) S/Res/1199

UN Security Council Resolution Res 1244 (10 June 1999) S/Res/1244

UN Security Council Resolution Res 1251 (29 June 1999) S/Res/1251

UN Security Council Resolution Res 1287 (31 January 2000) S/Res/1287

UN Security Council, Statement by the President of the Security Council (20 February 2001) S/PRST/2001/5

Report of the Secretary-General on his mission of good offices in Cyprus (1 April 2003) S/2003/398

Report of the Secretary General The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies (23 August 2004) S/2004/616

Report of the Secretary-General on his mission of good offices in Cyprus (28 May 2004) S/2004/437

Report of the Secretary-General on his mission of good offices in Cyprus (28 May 2004) S/2004/437

UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (21 March 2006) A/RES/60/147

Report of the Secretary General on the United Nations Operation in Cyprus (4 June 2007) S/2007/328

Report of the Secretary General on the United Nations Operation in Cyprus (28 November 2010) S/2010/744

Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence (14 October 2014) A/69/518

Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence (7 September 2015) A/HRC/30/42

Report of the Secretray-General on the United Nations Operations in Cyprus (10 July 2017) S/2017/586

Report of the Secretary General United on his Mission on Good Offices in Cyprus (16 April 2019) S/2019/322

Report of the Secretary General United Nations Operations in Cyprus (10 July 2019) S/2019/562

Case Law

The European Court of Human Rights and the European Commission of Human Rights

Asproftas v Turkey App no 16079/90 Merits and Just Satisfaction (27 May 2010)

Agrotexim and others v Greece App No 14807/89 Merits (24 October 1995)

Beshiri and others v Albania App no 7352/2003 Merits and Just Satisfaction (22 August 2006)

Blecic v Croatia App No 59532/00 Merits (8 March 2006)

Cyprus v Turkey Apps Nos 6780/74, 6950/75 Commission Report (10 July 1976); App No 8007/77 Commission Report (4 October 1983)

Demopoulos and others v Turkey Apps Nos 46113/99, 3843/02, 13751/02, 13466/03, 10200/04, 14163/04, 19993/04, 21819/04 Admissibility (1 March 2010)

Eleni Meleagrou and others v Turkey App no 14434/09 Admissibility (2 April 2013)

Eugenia Michaelidou Developments Ltd and Michael Tymvios v. Turkey App no 16163/90 Merits and Just Satisfaction 31 July 2003

Frydlender v. France App no 30979/96 Merits and Just Satisfaction (27 June 2000)

Gratzinger and Gratzingerova v. the Czech Republic App no. 39794/98 Admissibility (10 July 2002)

Holy Monasteries v Greece Apps nos *13092/87, 13984/88* Merits and Just Satisfaction (9 December 1994)

Iatridis v Greece App no 31107/96 Merits and Just Satisfaction (25 March 1999)

Jantner v Slovakia App no 39050/97 Merits (4 March 2003)

Joannou v Turkey Appl No 43240/2014 Merits (12 December 2017)

JS & AS v Poland App no 40732/98 Merits (13 December 2000)

Kopecky v Slovakia App no 44912/98 Merits (28 September 2004)

Loizidou v Turkey App no 15318/89 Preliminary Objections (23 March 1995)

Loizidou v Turkey App No 15318/89 Merits (18 December 1996)

Niazi Kazalı and Hakan Kazalı v Cyprus (Apps 49247/08 1545/07 1760/05 30792/05 3240/05 34776/06 38902/05 4080/06 49307/08) (Admissibility) 6 March 2012

Nuri v Albania App no12306/2004 Merits and Just Satisfaction (3 February 2009)

Paduraru v Romania App no 63252/00 Merits (1 December 2005)

Papamichalopoulos v Greece App no 14556/89 Merits (24 June 1993)

Sporrong and Lönnroth v Sweeden App nos *7151/75, 7152/75* Merits (23 September 1982)

Pincova and Pinc v Czech Republic App no 36548/97 Merits and Just Satisfaction (5 November 2002)

Pavlos Loizou and others v Turkey App No 50646/2015 Admissibility (26 October 2017)

Saghinadze and others v Georgia App no 18768/05 Merits (27 May 2010)

Smoje v Croatia App no 28074/03 Merits and Just Satisfaction (11 January 2007)

W*eidlich and others v Germany* Apps nos 18890/91, 19048/91, 19049/91, 19342/92 and 19549/92 Admissibility (4 March 1996)

Xendies- Arestis App no 46347/99 Admissibility (14 March 2005)

Xenides-Arestis v Turkey App No 46347/99 Merits (22 December 2005)

Xenides-Arestis v Turkey App No 46347/99 Just Satisfaction (7 December 2006)

Velikovi and others v. Bulgaria (Apps Nos 43278/98, 45437/99, 48014/99, 48380/99, 51362/99, 53367/99, 60036/00, 73465/01, and 194/02) Merits (15 March 2007)

Zvolsky and Zvolska v Czech Republic App No 46129/99 Merits and Just Satisfaction (12 November 2002)

European Court of Justice

Case C-432/92 *The Queen v Minister of Agriculture, Fisheries and Food, ex parte S. P. Anastasiou (Pissouri) Ltd and others* [1994] ECR I-03087

International Court of Justice

North Sea Continental Shelf Cases: *(Federal Republic of Germany v. Denmark; Federal Republic of Germany v. the Netherlands)* (1969) ICJ Reports 3

Advisory Opinion of the International Court of Justice in the Namibia case (Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970) (1971) ICJ Reports 16

TRNC Courts

Acapulco Holdings Limited ile 67/2005 sayılı Yasa tahtında oluşturulan KKTC Taşınmaz Mal Komisyonu arasında [Acapulco Holdings Limited v Immovable Property Commission established under Law No 67/2005] YİM 7/2013-8/2013, D 13/2007 (18 May 2017)

Akinita I. Th. Ioannou & Yi Limited ile Vakıflar Örgütü Ve Din İşleri Dairesi ve diğerleri arasında [Akinita I. Th. Ioannou & Yi Limited v Vaqf organisation and the Department for Religious Affairs] Yargıtay/Asli Yetki/İstida No: 1/2017 (Gazimağusa Dava No: 271/2000) D. 1/2018 (13 March 2018)

Akinita I. Th. Ioannou & Yi Limited ile Vakıflar Örgütü Ve Din İşleri Dairesi ve diğerleri arasında [Akinita I. Th. Ioannou & Yi Limited v Vaqf organisation and the Department for Religious Affairs] Yargıtay/Asli Yetki/İstinaf No: 1/2018 (Yargıtay/Asli Yetki İstida İstinaf No:2/2018 ile konsolide (Yargıtay/Asli Yetki İstida No: 1/2017) D. 2/2019 (13 March 2018)

Christopher Stylianou ile İskan İsleri ile Görevli Bakanlığı ve/veya Bakanlığı temsilen KKTC Başsavcılık arasında [Christopher Stylianou v Ministry of Interior represented by the TRNC Attorney General's Office] Yargıtay/Hukuk No: 129/2015 (Genel İstida No: 39/2015), D.50/2015 (3 December 2015)

Constantinos Vassiades ve diğeri ile İskan İşleri ile Görevli Bakanlık ve diğeri arasında [Constantinos Vassiades and other v the Ministry of Interior and other] Yargıtay Hukuk No: 15/2017 (Lefkoşa Dava No 9046/2015) D. 39/2018 (6 December 2018)

Eleni Meleagrou Ivy Meleagrou'nun vekili ile KKTC Taşınmaz Mal Komisyonu arasında [Eleni Meleagrou representative of Ivy Meleagrou v Immovable Property Commission] YİM 124/2009 D 13/2011 (27 June 2011)

Girne Tapu Dairesi vasıtasıyla KKTC Başsavcılık v Christopher Stylianou ve diğeri arasında [TRNC Attorney General's Office through Kyrenia Land Registry Office v Christopher Stylianou and others] YİM 66/2014 D 20/2015 (18 May 2015)

Hurşit Enver, Mağusa ile Müstedaaleyh: Gazi Mağusa İskân Şube Müdürü ve/veya İmar, İskân Bakanlığı vasıtasıyle KTFD arasında [Hurşit Enver, Famagusta v Defendant: Famagusta Land Registry Office and/or the Ministry of Interior through Cyprus Turkish Federated State] Anayasa Mahkemesi 4/83, D 10/83 (22 November 1983)

K V Mediterranean Tours Limited ile Taşınmaz Mal Komisyonu arasında [KV Mediterranean Tours Limited v Immovable Property Commission] YİM 262/2012, D. 32/2015 (6 November 2015)

Vakıflar Örgütü ve Din İşleri Dairesi ve Taşınmaz Mal Komisyonu ile K V Mediterranean Tours Limited [Vaqf organisation and the Department for Religious Affairs and the Immovable Property Commission v K V Mediterranean Tours Limited] YİM/İstinaf: 12-13-14/2015, D 6/2016 (29 November 2016)

1) Vakıflar Örgütü ve Din İşleri Daires, Abdullah Paşa Vakfının Emaneten İdarecisi ve Temsilcisi Sıffatıyle, Lefkoşa 2) Vakıflar Örgütü ve Din İşleri Dairesi, Lefkoşa ile KKTC Başsavcısı, Lefkoşa [1) Vaqf organisation and the Department for Religious Affairs, as the Trusted Advisor and Representative of the Abdullah Pasha Vaqf, Nicosia 2) Vaqf organisation and the Department for Religious Affairs, Nicosia v The Attorney-General of the TRNC] Gazimağusa Kaza Mahkemesi Dava No: 271/2008 *(*27 December 2005)

Ulusal Birlik Partisi ile KKTC Cumhuriyet Meclisi [National Unity Party v TRNC National Assembly] AM 3/2006, D 3/2006 (21 June 2006)

National Legislation of the TRNC and the Republic of Cyprus

Law for Housing, Allocation of Land and Property of Equal Value (Law No. 41/1977)

TRNC Constitution (1985)

The Turkish-Cypriot properties (Administration and Other Matters) (Temporary Provisions) Law of 1991 (Law no 139/1991)

Law as to Compensation for Immovable Properties Located within the Boundaries of the Turkish Republic of Northern Cyprus, which are within the Scope of Article 159, paragraph (4) of the Constitution (Law no 67/2005)

Rules Made under Sections 8(2) (a) and 22 of the Law for the Compensation, Exchange and Restitution of Immovable Properties Which are Within the Scope of Sub-paragraph (b) of Paragraph 1 of Article 159 of the Constitution (Law No 67/2005)

Law for Transfer and Registration of Rights over the Immovable Properties which are within the Scope of Sub-paragraph (b) of Paragraph (1) of Article 159 of the Constitution, and which, are not owned by any natural and legal persons, apart from the State, under the TRNC laws, being currently in Possession of such natural and legal persons (Law no 13/2008)

Treaties and other Legal Materials

Universal Declaration of Human Rights (1948)

The Geneva Conventions and Additional Protocols (1949)

European Convention on Human Rights and Fundamental Freedoms (1950)

International Covenant on Civil and Political Rights (1966)

International Convention on the Elimination of All Forms of Racial Discrimination (1965)

Vienna Convention on the Law of Treaties (1969)

The General Framework Agreement for Peace in Bosnia and Herzegovina (1995)

Measures to Dismantle the Heritage of Former Communist Totalitarian Systems – Parliamentary Assembly of the Council of Europe Resolution 1096 (1996)

Guiding Principles on Internal Displacement E/CN.4/1998/53/Add.2 (1998)

Draft articles on Responsibility of States for Internationally Wrongful Acts (2001)

Comprehensive Settlement of the Cyprus Problem (The Annan Plan V) (31 March 2004)

Sub-Commission on the Promotion and Protection of Human Rights, Principles on Housing and Property Restitution for Refugees and Displaced Persons (Pinheiro Principles) E/CN4/Sub2/2005/17

Web sites

https://www.akel.org.cy

http://www.birikimdergisi.com

http://www.cmp-cyprus.org

http://www.cyprusedirectory.com

http://cyprus-mail.com

https://www.cy.undp.org

https://etd.lib.metu.edu.tr

https://guardian.ng

http://www.gundemkibris.com

http://www.havadiskibris.com

http://www.hurriyetdailynews.com

https://www.ictj.org

https://kar.kent.ac.uk

http://knews.kathimerini.com.cy

http://www.kibrispostasi.com

http://www.kypros.org

http://www.newstatesman.com
http://www.philokypros.net
https://www.researchgate.net
http://www.reuters.com
http://truthnowcyprus.org
http://www.kibrisgazetesi.com
http://in-cyprus.com
http://meydankibris.com
http://www.newsincyprus.com
http://www.news.cyprus-property-buyers.com
http://tamk.gov.ct.tr
http://www.state.gov
https://tr.sputniknews.com
http://pio.mfa.gov.ct.tr
https://www.researchgate.net
https://www.theguardian.com
http://www.uncyprustalks.org
https://www.un.org
http://www.wun.ac.uk
http://www.yenibakisgazetesi.com
http://www.yeniduzen.com
https://www.youtube.com